JD-83-05
Ponce, PR

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

CONSEJO DE SALUD DE LA COMUNIDAD
DE LA PLAYA DE PONCE, INC. d/b/a
CENTRO DE DIAGNOSTICO Y TRATAMIENTO
DE LA PLAYA-PONCE (CDT)

and

Cases No. 24-CA-9999
24-CA-10059

UNITED STEELWORKERS OF AMERICA, AFL-CIO

Vanessa Garcia, Esq., for the General Counsel.
Harold Hopkins, Esq., for the Charging Party.
Agustin Diaz Garcia, Esq., for the Respondent.

DECISION

Statement of the Case

GEORGE ALEMÁN, Administrative Law Judge. This case was tried in Hato Rey, Puerto Rico on June 21-23, 2005, pursuant to unfair labor practice charges filed by United Steelworkers of America, AFL-CIO (the Union),[1] and a complaint issued on May 31, 2005, by the Regional Director for Region 24 of the National Labor Relations Board (the Board), alleging that the Respondent, Consejo de Salud de la Playa de Ponce d/b/a Centro de Diagnostico y Tratamiento de la Playa-Ponce (CDT) had violated Section 8(a)(1), (3) and (5) of the National Labor Relations Act (the Act). By answer dated June 13, 2005, the Respondent denied engaging in any of the above alleged unlawful conduct.

All parties were afforded a full and fair opportunity at the hearing to call and examine witnesses, to present oral and written evidence, to argue orally on the record, and to file post-hearing briefs. On the entire record, including my observation of the demeanor of the witnesses, and after considering a posthearing brief filed by the General Counsel,[2] I make the following

Findings of Fact

I. Jurisdiction

[1] The charge in Case No. 24-CA-9999 was filed on December 8, 2004, and amended on February 25, 2005, and again on April 29, 2005. The charge in 24-CA-10059 was filed March 15, 2005, and amended on May 27, 2005.

[2] The Respondent did not file a brief. The General Counsel also filed an unopposed motion to correct certain inaccuracies in the record. The motion to correct is hereby granted. The motion, with the requested corrections, is hereby made part of the record as General Counsel Exhibit No. 28.

The Respondent, a Puerto Rico corporation, maintains its principal office and main facility in Ponce, Puerto Rico, where it is engaged in the operation of a non-profit primary health care facility providing outpatient medical and related health care services. It also operates a satellite facility elsewhere in the town of Ponce, known as "El Tuque,"[3] as well as facilities in Juana Diaz and Tallaboa, Puerto Rico, respectively referred to herein as the Juana Diaz (or Singapur) and Tallaboa facilities. During the 12-month period preceding issuance of the complaint, a representative period, the Respondent, in the course and conduct of its business operations, purchased and received at its facilities goods valued in excess of $50,000 directly from points and places outside the Commonwealth of Puerto Rico. The Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

A. The allegations

The complaint alleges that the Respondent, through various supervisors and/or agents, violated Section 8(a)(1) of the Act by threatening employees with discharge, loss of benefits, physical harm, and other reprisals if they supported the Union; by soliciting employees to sign a petition disavowing support for or membership in the Union; by unlawfully interrogating employees about their Union activities, and by maintaining unlawful no solicitation and no distribution provisions in its employee manual. The complaint further alleges that the Respondent violated Section 8(a)(3) of the Act by issuing a written warning to employee Juan Vargas and thereafter canceling his scheduled vacation because of his union activities, transferring employee Felicita Diaz from its main facility to the Outpost or El Tuque facility, and issuing written warnings to employees Norma Ramirez and Sylvia Sanchez,[4] and thereafter transferring employee Norma Ramirez from its main facility to its Tallaboa facility. Finally, the complaint alleges that the Respondent violated Section 8(a)(5) of the Act by making unilateral changes in its employees' terms and conditions of employment without giving the Union prior notice and an opportunity to bargain over said changes, by refusing to comply with the Union's request for certain relevant and necessary information, and by failing and refusing to bargain with the Union.

B. Factual background

The record reflects that in late 2004, the Union sought to represent certain of the Respondent's employees. The organizational drive was initiated by X-ray technician Vargas, when, in October 2004, he met with the Union's representative at a restaurant in Ponce to discuss organizing Respondent's employees. After being advised as to the procedure that needed to be followed, Vargas received blank authorization cards for distribution to other employees. He testified that he and Diaz, a health care worker, distributed and obtained signed authorization cards from other employees which he subsequently turned over to the Union at a subsequent Union meeting.

On November 18, 2004, the Union filed representation petitions with the Board in Case 24-RC-8428 seeking to represent "All registered nurses employed by the employer at its location in Ponce, PR (described in the complaint as Unit A), and in Case 24-RC-8430, seeking

[3] The "El Tuque" facility was at times referred to at the hearing as the "Outpost."

[4] Sylvia Sanchez is mistakenly identified in the complaint as Sylvia Vazquez.

representation among "All social workers, licensed practical nurses, medical technicians, X-Ray technicians, laboratory technicians, and pharmacist assistants employed by the Employer at its Ponce, PR facility" (described in the complaint as Unit B; See, GCX-2). Following an election held on January 11, among employees in Units A and B, the Union, on January 21, was certified by the Board as the exclusive collective-bargaining representative of the employees in said bargaining units. Vargas served as the Union's observer at that election.

1. The alleged Section 8(a)(1) conduct

a. The no-solicitation/no distribution rules[5]

The Respondent maintains an employee manual containing, inter alia, the following rules on solicitation and distribution activity which the complaint alleges are unlawful:

> **PROHIBITED ACTIVITIES**
>
> Activities such as the following: solicitation of members for different associations, cash payments, all types of sales and others are prohibited to the personnel of the Center, unless they obtain a written permit from the Administration. All activities of this nature will be reported immediately to the Administration. (See GCX-4)
>
> **DISTRIBUTION OF PAMPLETS IN THE CENTER**
>
> No employee or visitor will be permitted to distribute pamphlets or place announcements on the walls, sites, or grounds of the Center without specific authorization from the Administration." (see GCX-27)

Discussion

As stated, the complaint, as amended, alleges both rules to be overly broad and unlawful. I find merit in the allegation. It is well-settled that employers may lawfully ban solicitation by employees during working time, but may not prohibit employee solicitation during their nonworking time, or their distribution of literature on their own free time in nonworking areas without a showing that such restrictions are needed to maintain plant discipline or production. *Republic Aviation Corp. v. NLRB*, 324 U.S. 793 (1945); *Stoddard-Quirk Mfg.*, 138 NLRB 615 (1962); *Our Way, Inc.*, 268 NLRB 394 (1983); See also, *Enloe Medical Center*, 345 NLRB No. 54, slip op. at 2 (2005); *Johnson Technology, Inc.*, 345 NLRB No. 47, slip op. at 15 (2005). In health care facilities, however, the Board, with court approval, has held that such employers may limit or restrict employee solicitation during nonworking time in "immediate patient care areas" such as patients' rooms, operating rooms, and places where patients receive treatment, such as X-ray and therapy areas. *St. John's Hospital*, 222 NLRB 1150 (1976); *Beth Israel Hospital v. NLRB*, 437 U.S. 483 (1979), *NLRB v. Baptist Hospital, Inc.*, 442 U.S. 773 (1979). Thus, a rule maintained by a health care employer banning solicitation and distribution of literature in "patient care areas" is deemed by the Board to be presumptively valid. *Baptist Medical Center/Health Midwest*, 338 NLRB 346, 357 (2002). Conversely, a rule prohibiting nonworking time solicitation by employees in areas other than immediate patient

[5] The complaint was amended at the hearing to include an allegation, denied by the Respondent, that the Respondent's promulgation and continued maintenance of a no-distribution rule violated Section 8(a)(1) of the Act. (Tr. 307).

care areas, or the distribution of literature by employees on their own time and in nonworking areas, will be deemed to be presumptively invalid absent a showing by the health care employer that the ban is needed to avoid a disruption of patient care. *Id*. Finally, employer rules requiring that employees get approval before engaging in lawful solicitation or distribution activity are also unlawful. *Baptist Medical Center*, supra; *Teletech Holdings, Inc.*, 333 NLRB 794, 795 (2001); *Lake Holiday Manor*, 325 NLRB 469, 478 (1998); *Blossom Nursing Center*, 299 NLRB 333, 338 (1990); *Brunswick Corp.*, 282 NLRB 794 (1987).

As described above, the solicitation and distribution rules, on their face, prohibit employees from engaging in such activity without the Respondent's prior consent and approval. The rules make patently clear, and the Respondent has not argued otherwise, that the "prior approval" requirement applies whether or not employees wish to engage in such activities on their own time and in the nonworking or "non-patient care" areas of the Respondent's facilities. Indeed, except for denying in its answers that the rules are unlawful, the Respondent has offered no justification or explanation for requiring employees wishing to engage in lawful solicitation and distribution of literature to first obtain its permission. As stated, the Board has held that any rule that requires employees to secure permission from their employer as a precondition to engaging in protected concerted activity on an employee's free time and in nonworking areas is unlawful. *Id*. Both of the Respondent's challenged rules do precisely that, rendering them facially invalid and unlawful under Section 8(a)(1) of the Act.[6]

b. The December 2004/January 2005 conduct

Sandra Cortes has been employed at the El Tuque facility as a dental hygienist and an assistant for about eight months prior to the hearing. Before that, she worked at the Respondent's main facility in Ponce. Cortes testified that in early December 2004,[7] Iris Miriam Perez, whom she described as a "co-worker," approached her and insisted that she sign a letter disavowing any interest in the Union, and stating that she did not want any Union initiation or monthly dues deducted from her paycheck. Cortes refused to sign the document, stating that she needed to consult with an attorney before doing so. Perez purportedly remarked that she and other employees who supported the Union were being ungrateful. (Tr. 57-59).

On or around January 24, Cortes was again approached, this time by Respondent's Assistant Director, Josefina Ramos (J. Ramos), an admitted supervisor and agent of the Respondent under Section 2(11) and 2(13) of the Act, and asked to sign what Cortes claims was the same letter Perez asked her to sign in December 2004. J. Ramos purportedly told her the purpose of the letter was to prevent Union dues from being taken out of her salary.[8] Cortes

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[6] The language in the no-solicitation rule requiring employees to report incidents of solicitation by other employees is also invalid and unlawful. See, e.g., *Baptist Medical Center*, supra at 383 and cases cited therein.

[7] While Cortes was not specific in her testimony as to the date this incident occurred, the complaint alleges this incident as having occurred on or around December 6 (see GCX-1[k], para. 7[a]).

[8] I find it unlikely that the letter J. Ramos asked Cortes to sign on January 24, and which the latter signed on or around that date (see GCX-7), is the same letter she was asked by Perez to sign in early December 2004, for GCX-7 makes reference to the election held on January 11, which the Union won. The early December 2004 letter presented by Perez to Cortes could not have made reference to the Board's January 11, election as the election obviously had not yet been held. Thus, it is implausible that the letter Cortes received from J. Ramos was the same one presented to her by Perez. Still, given the testimony by Irizarry and Ramirez that they too

Continued

testified that she felt uncomfortable and coerced by the request, but went ahead and signed the letter. Cortes further recalls that during their meeting, J. Ramos commented that employees were being ungrateful because Respondent's Executive Director, Monserrate Salichs, had been providing for them. J. Ramos went on to remark that employee Johnny Vargas was using the Union to harm CDT, that this was a struggle between Vargas and Salichs, and that "they were going to close it." (Tr. 58) J. Ramos did not testify, leaving Cortes' above testimony undisputed. Accordingly, except for her testimony that the letters she was given to sign in early December 2004 and in January 2005 were the same, I credit Cortes' account of what transpired with J. Ramos on January 24.[9]

Employee Noel Irizarry had been employed by the Respondent as a "maintenance" employee performing primarily janitorial services until terminated on May 20, for sleeping on the job. He testified that in early December 2004, his immediate supervisor, Aida Ramos (A. Ramos), an admitted Section 2(11) supervisor, approached him at the yard in front of the Respondent's Salina building, and handed him a document that read: "I am not interested in belonging to any movement related to the Union of the employees of Centro Diagnostico y Tratamiento de la Playa de Ponce." (see GCX-5). A. Ramos told him to take it with him and sign it. When Irizarry asked what the letter was all about, A. Ramos remarked, "Don't you know that Vargas is forming a Union?" Irizarry answered he did not, at which point A. Ramos instructed him to read and sign the letter. Irizarry asked A. Ramos where the letter had come from, and the latter replied that it had come from management. Irizarry, however, declined to do so without first getting some advice on the matter, but did offer to sign the letter if A. Ramos would allow him to keep a copy. A. Ramos then apologized, told Irizarry to have a good day, and left with the unsigned letter. I credit Irizarry's above account as to what A. Ramos said to him since the latter was not called to refute Irizarry's account, and as there is no other record evidence to contradict Irizarry's testimony in this regard.

Irizarry also testified that sometime in January, while he was on vacation, he had occasion to go to Respondent's facility to get the results of some lab work that had been done on him. He contends that while there, he observed J. Ramos with a paper in hand, standing just outside her office near the secretarial pool area, saying to A. Ramos and to Lucy Rivera, a

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were asked to sign a similar document in early December, I find Cortes' undisputed claim that Perez asked to her sign a document disavowing the Union in early December to be credible, and am convinced Cortes was simply mistaken in claiming that the December 2004 letter shown to her by Perez, and the one J. Ramos gave to her and which she signed in late January, were the same. I find it more likely than not that the document presented to her by Perez was similar to, if not the same as, GCX-5, the one Irizarry was asked to sign.

[9] The General Counsel offered, and I received into evidence over the Respondent's objections, a stack of letters sent to the Union anonymously sometime in February which, except for the employee signature found on each letter, is identical to the one given to Cortes by J. Ramos to sign on January 24. See, GCX-26. Union representative Maria Revelles recalls receiving them, but admitted she did not know who sent them. The General Counsel, at the hearing, suggested that the letters were prepared by the Respondent. While there is no direct evidence to show who prepared the letters, it is not unreasonable to infer, given that the letters contained in GCX-26 are identical to the one Cortes was asked by J. Ramos to sign on January 24, that the author of the GCX-26 letters is the same person who prepared the letter Cortes signed. Further, as the letter signed by Cortes was given to her by J. Ramos, an admitted supervisor, one may reasonably infer, as I do here, that Cortes' letter, and those sent to the Union anonymously sometime in February, were prepared by and circulated to employees for their signature by Respondent's management.

secretary, who were standing nearby, that the document she had was from the Union, and that she could "wipe her ass" with the document and with those who had voted for the Union.[10] He also testified that on another occasion, again in January, as he was walking by the secretarial pool, he heard J. Ramos comment to a maintenance employee, whom he knew only by her first name of "Milagros," that "those who voted for the Union are playing with their wives' and children's well-being." (Tr. 75). Irizarry's testimony regarding J. Ramos' January comments are uncontradicted and accepted as true.

Finally, Irizarry testified to having a conversation with J. Ramos near the guard's booth on Respondent's premises on January 25 around 10:00 p.m., during which J. Ramos made some derogatory and threatening remarks about Vargas. J. Ramos, he contends, was complaining about federal agents who were at the facility conducting some sort of investigation, and then complained to him that the Union, and those who voted for it, were responsible for the agents being there. Irizarry claims that J. Ramos went on to say that if "this dirty black Johnny Vargas, if he was in front of me right now, I would hit him in the chest, and if I had a firearm, I would shoot him and kill him. And may God allow that when he leaves at 11:00, he crashes against the post and is killed." She then told Irizarry, "I know you're going to tell him, so go tell him." (Tr. 77). The only other person nearby was the security guard, whom Irizarry could not identify by name. Irizarry's testimony regarding this incident is uncontradicted and credited.

Pharmacist Anasin Martinez (A. Martinez) has been employed by the Respondent for 30 years. She testified that in December 2004, just prior to Christmas, she was standing near the timeclock and overheard J. Ramos tell a nurse, Carmelita Santos, to be careful of Vargas and herself (A. Martinez) because they were the ones "bringing [authorization] cards in and trying to get the Union into the center." J. Ramos, according to A. Martinez, had her back turned to her and apparently was unaware of the latter's presence when she made her remark. A. Martinez' above testimony is undisputed, and therefore credited, as neither J. Ramos nor Santos testified.

A. Martinez also testified, again without contradiction, that on January 12, she, along with personnel director and admitted Section 2(11) supervisor Olga Mercado, pharmacist Mendez, and Moises Franco, who is in charge of the pharmacy warehouse, were conversing when she heard Mercado instruct Mendez to refer any employee who made pro-Union remarks to the personnel department so that "measures" could be taken against the employee. (Tr. 41). A. Martinez claims that, to her knowledge, no prohibition existed on the topics that could be discussed by employees at the workplace. Although she appeared at the hearing momentarily while A. Martinez was testifying, Mercado was not called as a witness to refute A. Martinez' testimony, or to testify on any other matter Nor did Mendez or Franco testify. Accordingly, A. Martinez' testimony is credited.

A. Martinez also recalled that sometime in January, Perez presented her with, and asked her to sign, a document stating that she was not interested in belonging to any union (GCX-5). A. Martinez asked why she needed to sign the document, but Perez did not respond. A. Martinez declined to sign the document.

Diaz is one of seven health care workers employed by Respondent. She testified that

[10] Irizarry claims he was on vacation from December 13, 2004 to January 24, 2005. As the Board election was held on January 11, and given J. Ramos' alleged pejorative comment about those employees who voted for the Union, it is reasonable to assume that the remark Irizarry claims to have heard J. Ramos' make occurred sometime after the January 11, election.

Perez, whom she described an administrative official or, at least, a supervisor,[11] also approached her on December 6, 2004, and asked her to sign a statement, written on Company stationary, disavowing any interest in belonging to the Union. While not produced at the hearing, Diaz described the document's wording as similar to that found on GCX-5, the document Irizarry was asked to sign, except that it contained the Respondent's letterhead. When presented with the document, Diaz expressed surprise that the Respondent would be asking her to sign such a letter, to which Perez replied that she was acting on her own, presumably without the Respondent's knowledge or consent. Diaz, however, expressed skepticism at Perez' remark and told Perez that she did not believe Perez was acting on her own because the statement was prepared on Company stationary containing its letterhead. Diaz declined to sign the statement and asked Perez if she could keep the letter, to which Perez replied that she could not. I credit Diaz' account of her encounter with Perez on December 6, 2004, as Perez did not testify, and as there is no other record evidence contradicting Diaz' testimony.

Employee Ramirez, a registered nurse at the Tallaboa facility, testified she was approached by Perez in early December 2004, and asked to sign a letter stating she did not want and did not approve of the Union. Ramirez could not recall the exact wording of the letter, but did recall that it was on Company stationary, and contained small squares on it, presumably for use in checking off items. Ramirez refused to sign the letter.

Vargas testified that on December 24, 2004, he attended a mandatory employee meeting at which Salichs, Mercado, and Respondent's attorney, Diaz-Garcia, were present. The purpose of this meeting, according to Vargas, was to convey to employees that their support for the Union might have adverse consequences. He recalls, for example, Diaz-Garcia mentioning that if the Union got in, employees might lose certain unspecified benefits, or have certain benefits reduced, such as Christmas bonuses, vacation time, sick leave, and uniform benefits. Vargas claims that at one point during the meeting, he tried to ask a question but was told by Diaz-Garcia to wait until the meeting ended to ask questions. Frustrated at not being able to ask his question, Vargas left the meeting early. He recalled, however, telling employees not to be intimidated by what was being said because it was all untrue. (Tr. 123). The above testimony by Vargas regarding this employee meeting and what was said is undisputed and accepted as true.

Ramirez also testified that on January 7, Salichs came to Ramirez to have a blood sample drawn. She contends that as she was performing the procedure on Salichs, the latter remarked that Ramirez should not betray her. Ramirez replied that she would not betray Salichs as she was one of hers. Salichs then remarked that she had heard that Ramirez was one of the Union's delegates, but Ramirez denied it, stating that she did not belong to the Union, and could not attend any Union meetings because she lacked the time to do so and because her mother was sick. Several days later, on January 13, Salichs again came to Ramirez to have a blood sample drawn. Ramirez asked Salichs to wait a moment as she was discussing a matter with a patient. When Ramirez finished with the patient, she returned to find that her co-worker, Sanchez, had already taken care of Salichs. On seeing Ramirez, Salichs commented that Ramirez had not wanted to take her blood sample, and that she would get even with Ramirez by transferring her to the El Tuque facility. Ramirez replied, "Chunga, you cannot do

[11] The Respondent offered no evidence to refute Diaz' description and characterization of Perez' status. Accordingly, I find that Perez was, at all times material herein, a statutory supervisor.

that to me."[12] Thereafter, as both were leaving the lab, Salichs asked Ramirez if she had been invited to the Union party being held at Vargas' house. Ramirez responded that this was the first she had heard of it, and that if Salichs knew about it, "to let me know so we could both go together." (Tr. 221).

Discussion

I find, as alleged in the complaint, that J. Ramos' January remark to employee Milagros, that employees who voted for the Union were playing with their wives' and children's well being, was unlawful. There is no indication in Irizarry's undisputed and credited account of what he heard J. Ramos say to suggest that the latter explained what he meant by his remark. Absent some legitimate explanation for the remark, Milagros, to whom the remark was directed, and Irizarry, who overheard the remark, could reasonably have construed J. Ramos' remark as a threat that those who had voted for the Union were at risk of losing their jobs. As such, J. Ramos' remark would reasonably have had a coercive and chilling effect on Milagros', Irizarry's, and other employees' willingness to engage in Section 7 protected activity on behalf of the Union. Accordingly, the remark, as previously stated, was unlawful and a violation of Section 8(a)(1) of the Act. *Ferragon Corp*., 318 NLRB 359, 367 (1995); *Weather Tamer, Inc*., 253 NLRB 293, 300 (1980).

I also find, as further alleged in the complaint, that Salichs' January 7, comment to Ramirez, that she had heard that Ramirez was one of the Union's delegates, constituted an unlawful interrogation. As Executive Director, Salichs is the Respondent's highest official. Salichs' inquiry into Ramirez relationship with the Union, as noted, occurred in a workplace setting, while Ramirez was working and about to draw blood from Salichs. Salichs gave Ramirez no explanation for her comment. While declarative in nature, Salichs' comment about hearing that Ramirez was a Union delegate was, I am convinced, designed to get Ramirez to admit or deny the claim and, in this regard, was more in the nature of an interrogation. Salichs gave Ramirez no explanation for why she needed to know whether or not Ramirez was a Union delegate, and further gave Ramirez no assurance that she did not have to respond to the query or that she would not be retaliated against if she did respond. Finally, there is no indication that Ramirez was, in fact, a Union delegate or, for that matter, a Union supporter. In these circumstances, I find that Salichs' query to Ramirez was indeed coercive and violated Section 8(a)(1) of the Act. *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985); *Rossmore House*, 269 NLRB 1176, 1177 (1984).

Mercado's January 12, directive to pharmacist Mendez, to report any employee overheard making pro-Union remarks so that measures could be taken against that employee was also unlawful. Mercado's instruction to Mendez, as noted, directed her to report on only those employees who were heard making pro-Union remarks. She imposed no similar restriction on employee discussion of other matters, or on the expression of anti-Union sentiment by employees. A. Martinez, as noted, credibly testified that, to her knowledge, the Respondent maintained no rule or restriction on what employees could or could not discuss at the workplace. An employer violates the Act when it prohibits employees from talking about the Union while permitting employees to discuss other nonwork related matters. *Aladdin Gaming, LLC*, 345 NLRB No. 41, slip op. at 22 (2005); *Kelly Brothers Sheet Metal, Inc.*, 342 NLRB No. 9

[12] Ramirez claims that she has at times, but not frequently, referred to Salichs by the nickname "Chunga". She contends that she has known and worked with Salichs since 1971, that it was Salichs who offered her employment, and that she felt sufficiently comfortable in addressing Salichs as "Chunga." As Salichs did not testify, I credit Ramirez' testimony.

(2004), *Waste Management of Palm Beach*, 329 NLRB 198, 201 (1999); *Opryland Hotel*, 323 NLRB 723, 728 (1997). Accordingly, Mercado's directive to Mendez, that employees found to be making pro-Union statements be reported to Respondent's personnel department, and that unspecified "measures" would be taken against said individuals, amounted to an unlawful restriction on their section 7 rights, as well as unlawful threat of unspecified reprisals for engaging in such conduct, and violated Section 8(a)(1) of the Act.

The Respondent, as alleged in the complaint, also violated Section 8(a)(1) when, during the employee meeting conducted by Salichs, Mercado, and Respondent's attorney Diaz-Garcia, the latter told employees that if the Union got in, employees could lose, or face a reduction in, certain benefits, such as their Christmas bonus, vacation time, sick leave, and uniform benefits. Vargas' assertion that Diaz-Garcia made the above remarks during the meeting was, as noted, not challenged by the Respondent. Nor has any claim been made by the Respondent that attorney Diaz-Garcia's remark was intended to reflect what might likely occur as a result of good faith bargaining with the Union. Without any such qualification, Diaz-Garcia's remark could reasonably have been construed by Vargas and other employees present at the meeting as a threat that the potential loss or reduction in their benefits stemmed from their support for the Union. The Board has long found such threats to be coercive and unlawful. See, e.g., *The Smithfield Packing Company, Inc.*, 344 NLRB No. 1 (2004); *Oster Specialty Products*, 315 NLRB 67, 75 (1994); *Beverly Enterprises*, 310 NLRB 222, 263 (1993); *Heritage Nursing Homes, Inc.*, 269 NLRB 230, 232 (1984).

J. Ramos' January 25, remarks to Irizarry, wherein she threatened Vargas with physical injury and blamed the Union for an investigation being conducted at its facility by federal agents, were also unlawful. As noted, on January 25, J. Ramos denigrated Vargas in front of Irizarry by referring to him as a "dirty black" individual, and threatened that, had Vargas been present at that moment, she would have punched Vargas in the chest and, more seriously, would have shot and killed him if she had had a firearm. J. Ramos further expressed her morbid wish to Irizarry that, on leaving work that evening, Vargas would crash into a pole and be killed. J. Ramos' threatening remark about what she would do to Vargas was clearly coercive. The coercive nature of such a threat derives from the ability of the speaker or party to carry out the threat. *Smithfield Packing Company, Inc.*, 344 NLRB No. 1 (2004); *Sears, Roebuck And Co.*, 305 NLRB 193 (1991). There is nothing in Irizarry's account of what J. Ramos said to him to suggest that the latter was simply joking or did not intend for her remarks to be taken seriously. J. Ramos, as noted was not called to refute or explain her comments. The evidence, particularly J. Ramos' racial denigration of Vargas as a "dirty black," and her rather defiant attitude, reflected in her further comment that Irizarry could inform Vargas of her (J. Ramos') remarks, leads me to believe that not only was J. Ramos speaking seriously when she made her threatening remarks, but that she may very well have been capable of carrying out her threat had Vargas been present at the time. Accordingly, I find J. Ramos' threat to physically harm Vargas to have been coercive and a violation of Section 8(a)(1).

J. Ramos' further remark about the Union being responsible for the investigation the Respondent was being subjected to by federal agents, was likewise unlawful. There is no evidence to indicate that whatever investigation was being conducted of the Respondent when J. Ramos made his remark had been prompted or instigated by the Union. J. Ramos' attempt to blame the Union for this particular problem it was having could reasonably have led Irizarry and others to believe that the Respondent viewed the Union and its supporters as the cause of its troubles. As such, employees might very well refrain from lending support to the Union for fear that they may be held responsible for the Respondent's misfortunes and be subjected to retaliation or reprisals. The circumstances in which J. Ramos' comment was made, to wit, in conjunction with the threat to physically harm Vargas, the Union's leading adherent, renders the

remark coercive and a violation of Section 8(a)(1) of the Act. *Perth Amboy General Hospital*, 279 NLRB 52 (1986).

The complaint alleges, and I agree, that the Respondent's attempts in early December 2004, by supervisors J. Ramos, A. Ramos, and Perez to get employees Cortes, Irizarry, Diaz, and Ramirez to sign statements expressing their opposition to the Union, and its solicitation of signed letters from employees in late January, after the Union was certified by the Board, stating that they had no interest in being part of the bargaining unit or in belonging to any union, and did not authorize deductions of fees and dues from their salary, were unlawful.

Section 8(c) affords an employer the right to express its view of unionization to its employees, to advise employees of their Section 7 rights, e.g., to join or not join a union, unions, their right not to sign or to revoke union authorization cards, etc., provided it does so in an atmosphere free of coercion or intimidation. See, *Cintas Corporation*, 344 NLRB No. 118 (2005); *Airporter Inn Hotel*, 215 NLRB 824 (1974). An employer, however, may not coercively initiate or solicit a petition or letter opposing unionization. *Dentech Corp.*, 294 NLRB 924 (1989); see also, *Progressive Electric, Inc.*, 344 NLRB No. 52 (2005), citing Dentech, supra; *Indiana Cabinet Company, Inc.*, 275 NLRB 1209 (1985); *Eastern States Optical Co.*, 275 NLRB 371, 372 (1985); *Mariposa Press*, 273 NLRB 528, 529-530 (1984); Compare, *Progressive Electric, Inc.*, 344 NLRB No. 52 (2005). The undisputed facts here make patently clear that the Respondent did just that when it prepared and had its supervisors distribute to Cortes, Irizarry, Diaz, and Ramirez, and possibly other employees, letters to sign expressing their opposition to the Union. There is no evidence to suggest, nor for that matter does the Respondent contend, that it was responding to any inquiries or requests from employees when it prepared and circulated the letter. In late January, following the Union's certification, the Respondent again circulated, and asked employees to sign, letters stating that, despite the Union's success in the Board election, they wanted nothing to do with the Union nor wished to pay any Union fees and dues. Again, there is no evidence that the Respondent was responding to employee requests when it prepared and circulated this particular letter to employees. Accordingly, by preparing and circulating in December 2004 and in late January 2005, letters for employees to sign expressing their rejection of the Union and stating their unwillingness to pay Union fees and dues, the Respondent violated Section 8(a)(1) of the Act.

2. The alleged Section 8(a)(3) conduct

(a) Vargas' warning and vacation cancellation

Vargas has worked for the Respondent for 32 years as an X-ray technician. J. Ramos is his current supervisor. As previously pointed out, Vargas was the Union's leading adherent at the Respondent's facility, and was the one most responsible for the Union's arrival on the scene. On or around December 3, 2004, Vargas was summoned by Mercado to the latter's office and handed an envelope containing a written warning, prepared and signed by Mercado, for using his cell phone during working hours. The warning accused Vargas of "constantly abandoning [his] work area to use [his] cell phone during [his] work schedule." It further stated that "[o]n several occasions, your supervisor has pointed out that using the cell phone during working hours is prohibited," and that Vargas had "ignored this." Finally, the warning cautioned that the Respondent would be forced to take disciplinary action against Vargas if he continued with this practice. (See GCX-10). After reading the warning, Vargas complained that he was being persecuted for his Union activity.

Vargas claims that other than a posted sign at the X-ray department prohibiting the use

of cell phones in that particular area, he was never told of any prohibition on the use of cell phones elsewhere in the facility, and, prior to the December 3, 2004, warning, had never been spoken to or cautioned by any supervisor for using his cell phone during working hours. He admitted using his cell phone during working hours, but testified that he always did so outside of the building, not in the X-ray department, and claimed to have seen other employees using their cell phones in the same general area as he, as well as inside the Respondent's facility, during their working hours.

A few days after receiving the warning, Vargas was called by Nursing Director, Maria Teresa Martinez (Martinez), an admitted Section 2(11) supervisor, to her office where she discussed the use of cell phones with him, and also told him that Mercado had prepared a report of the cell phone incident that purportedly led to the warning. Vargas admits telling Martinez at this meeting that he had used his cell phone during work hours, but complained to her that, in his view, he was being retaliated against for his Union activities. He further asked Martinez why he was being singled out for using his cell phone when approximately 70% of the employees used their cell phone during working hours. Martinez, he contends, denied seeing others engaging in such conduct or knowing anything about the cell phone use by other employees. Vargas claims he then asked Martinez why those employees who supported him in his Union activities were being transferred to other locations. Martinez did not respond to his question and simply took notes of what Vargas was saying. As to his cell phone use, Martinez simply instructed him not to use his cell phone again.

Regarding the warning, Martinez testified that it was Mercado alone who made the decision, but that Mercado did discuss the incident with her. She claims that Mercado called her to complain about seeing Vargas using his cell phone during working hours, and asked her to speak to Vargas about it. Martinez contends she discussed the matter with Vargas later that same day. She admits that she had, in the past, seen Vargas using his cell phone during his regular work hours away from his work area, but had taken no action or discussed the matter with him prior to receiving the phone call from Mercado.[13] Except for Martinez' vague reference on cross-examination that she provided Vargas with a "report" on the use of cell phones, no evidence was produced to show that the Respondent maintained a rule or policy prohibiting the use of cell phones by employees during working hours or away from their work station. Nor was any evidence produced to show that employees were ever told that such a practice was prohibited by the Respondent.

Martinez' ambiguous and somewhat contradictory claim that she showed Vargas a "report" regarding the use of cell phones, before the latter received his warning, is rejected as not credible. Rather, I credit Vargas and find that, prior to receiving the warning from Mercado, he was never told that the use of cell phones at the facility was prohibited or contravened some Company rule or policy. Nor do I believe that, as suggested by Martinez, the Respondent had any such rule for, if it had, the Respondent, I am certain, would have produced it. I find instead, as testified to by Vargas credibly and without contradiction, that the use of cell phones by employees during working hours was a common and accepted practice at the facility. Finally, I

[13] Her testimony on whether she had previously spoken to Vargas about his cell phone use is somewhat contradictory. Thus, while stating on direct examination that she had not, prior to being asked to do so by Mercado, spoken to Vargas about his cell phone use, on cross-examination Martinez stated that she had shown Vargas a report on the use of cell phones at the facility, and spoken to him about it, before Vargas received his warning. She claims that during that pre-warning conversation, Vargas admitted using his cell phone during working hours and insisted he would continue doing so because other employees were doing it.

credit Vargas' undisputed version of his meeting with Mercado as the latter was not called to testify. Thus, I find that Mercado never gave Vargas a clear explanation for the warning, e.g., when and where the alleged violation of the purported cell phone policy occurred, but simply handed him the warning, asked Vargas to sign it and, when the latter declined, terminated the meeting.

Vargas also testified that in December 2004, he spoke with and reminded Martinez that he was scheduled to go on vacation on December 13, 2004. Vargas claims that his December 13, vacation start date had already been discussed and confirmed with Mercado months earlier. Martinez told Vargas that she was aware of his upcoming vacation because she too was scheduled to begin her vacation at the same time. According to Vargas, one week prior to December 13, he went to Mercado's office to remind her of his upcoming vacation and, as she was not there at the moment, left a message with Mercado's secretary, Margaret Cintron. Cintron told Vargas to come back a week later to sign his vacation papers. (Tr. 98-99).

Vargas claims that soon after his conversation with Cintron, Martinez called him into her office and informed him that his upcoming December 13, 2004, vacation had been cancelled for economic reasons, and that his vacation would be rescheduled for sometime in January. Vargas protested that he had already made plans to travel with his family to Massachusetts, and insisted on a further explanation as to why his vacation was cancelled. Vargas expressed his belief that his vacation had been cancelled because of his organizational activities on behalf of the Union, and that he was being retaliated against for said activities. (Tr. 99). Vargas received no further explanation for the cancellation of his December 13, 2004, vacation from Martinez or anyone else in management.

Martinez, who was responsible for preparing the monthly work and vacation schedules for those in her department, including Vargas and the per diem X-ray technicians, testified that Vargas initially requested and was approved to take his vacation beginning December 24, 2004, but that he subsequently asked for, and received her permission to change his vacation start date to December 13, 2004. As to the decision to cancel Vargas' vacation, Martinez denied involvement in that decision, and testified that Mercado alone made the decision. She claims Mercado called her sometime in December 2004, precisely when she could not recall, and informed her that Vargas' scheduled December 13, vacation was being cancelled. Martinez' testimony on whether Mercado gave her a reason for the cancellation was confusing. Thus, when asked to cite the reason given by Mercado, Martinez claims Mercado "mentioned that per diem and police were not available, and I don't recall if she mentioned it [was] for economic reasons." Mercado, she contends, explained that "some adjustments needed to be made in order to cover appointments patients had for mammograms." She further contends that Mercado did not explain her comment that the "per diems were not available." Asked again if Mercado raised "the financial factor" as a reason for the decision, Martinez answered, "I'm not certain. I'm not certain if I was notified of the economic factors. I was told only that Mr. Vargas was not going to enjoy his vacation for now, the reason being the need to cover." In short, Martinez contends that Mercado told her only that Vargas' vacation had been cancelled because "the per diems were not available." (Tr. 183).

Martinez admits not knowing, purportedly until told by Mercado, that the per diem X-ray technicians would not be available to work during the month of December. Clearly, as the person having direct supervision over the per diem employees and responsibility for preparing their monthly work schedules, including the December 2004, work schedule, Martinez, one might reasonably expect, would have been privy to such information. Martinez, however, insisted that, as far as she knew, only one of the per diems who was on workers' compensation might not be available to work that month. Nothing in her testimony suggests that the absence

of this one per diem employee would have created such a staffing shortage as to have warranted the cancellation of Vargas' December vacation.

I give no weight to Martinez' above testimony as to what Mercado may have told her about the cancellation of Vargas' vacation. As Mercado did not testify, Martinez' account of what Mercado purportedly cited as the reason for canceling Vargas' vacation cannot be corroborated or confirmed. Further, no evidence was produced to show that all three per diem employees were unavailable to work during the month of December, as Martinez claims she was told by Mercado, so as to have possibly warranted the cancellation of Vargas' scheduled vacation. Thus, even if I were to believe, as claimed by Martinez, that Mercado told her that Vargas' vacation had to be cancelled because all three per diem employees would be unavailable during December, there is simply no way of ascertaining, absent corroborating and credible testimony from Mercado or the per diem employees in question, if what Mercado allegedly told Martinez was, in fact, true. Indeed, the evidence of record, particularly Martinez' admission that she did not know of the per diems' unavailability, and the work schedule for December 2004 showing that all three per diems were scheduled to work, [14] casts doubt on the reason allegedly cited by Mercado to Martinez for canceling Vargas' December vacation. Accordingly, I reject as unreliable hearsay, and give no weight to, Martinez' testimony as to what Mercado may have told her was the reason for canceling Vargas' vacation.

Martinez testified that after being notified by Mercado of her decision to cancel Vargas' vacation, she in turn told Vargas of the cancellation without giving him an explanation, and simply told Vargas that if he had any questions he should address them to Mercado. According to Martinez, while Vargas' scheduled December 13, 2004, vacation start date had been cancelled, she nevertheless presumed that Vargas would be allowed to take his vacation on December 24, 2004, the date he had initially signed up for. She testified, however, that at some point, Mercado told her that Vargas would not be able to take his vacation on December 24, 2004, either. (Tr. 186).

Although told by Martinez that he could take his vacation in January, Vargas received no further instructions as to when in January he might be able to do so and, consequently, did not take vacation in January. Vargas eventually went on vacation sometime in February.

Discussion

The complaint alleges, and the General Counsel contends, that the December 3, 2004, warning issued to Vargas for using his cell phone at the facility, as well as the cancellation of his scheduled December 13, 2004, vacation, was in retaliation for his Union activity and, therefore, unlawful. In determining whether an employer's actions against an employee are discriminatory, the Board applies the causation test set forth in *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982), approved in *NLRB v. Transportation Management Corp.*, 462 U.S. 393, 399-403 (1983). Under *Wright Line*, the

[14] The work schedule for the month of December 2004, prepared by Martinez was entered into evidence as GCX-8. GCX-8 shows the per diem X-ray technicians were scheduled to work on weekends during the month of December 2004. It is unclear, however, how this particular schedule for December 2004, differed from that prepared for the preceding months, as the monthly reports for those prior months were not produced or discussed at the hearing. It might very well be that the work schedule for the per diem employees set forth in the December schedule did not vary much from those of the prior months, and that the per diem employees were generally used for weekend work only.

General Counsel, as part of his burden of proof, must make an initial prima facie showing that the action taken against the employee was motivated, at least in part, by his involvement in union or other protected activity. The General Counsel makes out a prima facie case by showing that the employee involved had engaged in union or other protected activity, that the employer knew or was aware of such activity, that it harbored antiunion animus, and that said animus was a motivating factor in the decision taken. If the General Counsel succeeds in making out a prima facie case, the burden shifts to the employer to demonstrate that it would have taken the same action against the employee even if the employee had not engaged in any union or protected activity.

The General Counsel, I find, has made a strong prima facie showing that the actions taken by the Respondent against Vargas, to wit, issuing him the December 3, 2004 warning, allegedly for using his cell phone during working hours, and canceling his December 13, 2004 vacation, were motivated, if not wholly at least in part, by his union activity. The record makes clear that Vargas was the one primarily responsible for bringing in the Union, for it was he who first contacted the Union for assistance in organizing Respondent's employees and who, with assistance from Diaz, solicited signed authorization cards from other employees which he collected and delivered to the Union. Vargas also signed an authorization card for the Union, attended Union meetings, and served as the Union's observer during the January 11, election. The evidence further shows, and the Respondent does not deny, that it was fully aware of Vargas' involvement with the Union in early December 2004, when it issued him the warning and cancelled his vacation. In this regard, Irizarry testified, credibly and without contradiction, to being told by supervisor A. Ramos in early December 2004 that Vargas was forming a union, and to overhearing J. Ramos tell nurse Santos in December 2004 that Vargas was the one responsible for distributing authorization cards and trying to bring in the Union. Further, Vargas disclosed his own involvement with the Union to the Respondent when, shortly after receiving the December 3, 2004 warning, he asked supervisor Martinez why employees who had supported him in his union efforts were being transferred to other locations. Finally, undisputed record evidence, including Respondent's unlawful early December 2004 and late January 2005, attempts to have employees sign statements disavowing or rejecting the Union, J. Ramos' derogatory remark about "wiping her ass" with a document sent to her by the Union, her unlawful remark that employees who voted for the Union were jeopardizing their family's well-being, the rather callous and threatening remarks J. Ramos made to Irizarry about Vargas on January 25, along with the other Section 8(a)(1) violations it is found to have engaged in, amply reveals the Respondent's animosity towards the Union and its supporters.

The Respondent, for its part, has offered no credible evidence to rebut the General Counsel's prima facie case regarding the December 3, 2004, warning issued to Vargas, and its cancellation of Vargas' December 13, 2004, vacation. As to the December 3, written warning, there are sound reasons for questioning its reliability. The warning, as noted, was issued by Mercado to Vargas allegedly for using his cell phone during working hours. Vargas admits that he regularly used his cell phone while at work, but testified, credibly and without contradiction, that he generally did so outside the facility, and that he was never told or warned not to do so, or that the use of cell phones inside or outside of the Respondent's facility contravened any rule or policy. Martinez corroborated Vargas in this regard by admitting that, while she had seen Vargas using his cell phone in the facility during working hours, she never spoke to, or admonished, Vargas about it. Vargas also testified, again without contradiction and with corroboration from Martinez, that employees regularly used cell phones during working hours at the facility. No evidence of prior warnings having been issued to other employees for engaging in such conduct was produced by the Respondent. Nor was any documentary evidence produced to show the existence of any such prohibition at the Respondent's facility. I am convinced that none was produced because the Respondent, at least as of December 3, 2004,

maintained no such rule or policy banning the use of cell phones in its facility during working hours, or prohibiting employees from leaving their work stations to make cell phone calls.

In short, the assertion in Mercado's December 3, 2004, warning letter, that Vargas was constantly abandoning his work station to make phone calls and had repeatedly been warned against using his cell phone during working hours, is squarely contradicted by Vargas and, to some extent, by Martinez. As noted, the decision to issue the warning was made by Mercado alone. Thus, Mercado, not Martinez, was in the best position to clarify this obvious discrepancy, and to explain why Vargas received a warning for conduct he and other employees had previously engaged in without suffering any adverse consequence. The Respondent, however, chose not to have Mercado testify despite the fact that Mercado did make an appearance at the hearing. Its failure to do so leads me to conclude that Mercado was not called for fear that her testimony would not have supported the Respondent's explanation for issuing Vargas the warning. *GATX Logistics*, 323 NLRB 328, 335 (1997). I am convinced that the reason cited by Mercado in the warning is nothing more than a pretext. When an employer advances a pretextual reason for alleged unlawful conduct, it fails to meet its burden under *Wright Line* of rebutting the General Counsel's prima facie case. See, e.g., *Aljoma Lumber, Inc.*, 345 NLRB No. 19 (2005); *McGaw Of Puerto Rico, Inc.*, 322 NLRB 438, 449 (1996); *Aero Metal Forms*, 310 NLRB 397, 399 (1993); *Bardaville Electric*, 309 NLRB 337 at fn. 3 (1992). Having failed to rebut the General Counsel's prima face case, the Respondent, I find, violated Section 8(a)(3) and (1) of the Act when it issued Vargas the warning on December 3, 2004.

Regarding the cancellation of Vargas' vacation, that decision, according to Martinez, was made solely by Mercado. Mercado, as previously noted, did not testify, and the only evidence as to the reason for Mercado's decision came in the form of unreliable hearsay testimony by Martinez. The only explanation proffered by the Respondent for canceling Vargas' December vacation is that said cancellation was necessitated by the per diem employees unavailability to work that month. As found above, however, no evidence, other than Martinez' unsubstantiated claim of what Mercado said to her, was produced to show that the per diem employees were in fact unavailable to work during the month of December 2004. Nor was Martinez' description of her conversation with Mercado regarding the cancellation of Vargas' vacation trustworthy or reliable. Martinez, as noted, initially claimed that Mercado mentioned "economic reasons" as the basis for the cancellation, but subsequently vacillated in her testimony by stating that she was not quite sure if Mercado mentioned "economic reasons" as a factor in that decision. Further, Martinez, as noted, admits that she never told Vargas why his vacation had been cancelled, and simply instructed Vargas to ask Mercado for the reason. If Vargas' vacation had, in fact, been cancelled due to the unavailability of the per diem employees, arguably a legitimate reason if shown to be true, Martinez would have had no reason to conceal that fact from Vargas and would, I am convinced, have mentioned this to Vargas. Her refusal to disclose to Vargas the reason for the cancellation of his vacation, as purportedly told to her by Mercado, leads me to believe that Martinez either did not believe Mercado's explanation for her decision, or that the reason purportedly cited to her by Mercado for canceling Vargas' vacation was something other than the unavailability of the per diem employees, which Martinez did not feel comfortable disclosing to Vargas. Martinez' failure to give Vargas the explanation or reason purportedly mentioned to her by Mercado for canceling his vacation, to wit, the unavailability of the per diem employees, supports a finding that the latter reason is nothing more than a pretext, and that the true reason is an unlawful one which the Respondent seeks to hide.

Having rejected as unsubstantiated Martinez' explanation for the cancellation of Vargas' December vacation, and as the explanation recounted by Martinez appears, in any event, to be nothing more than a pretext, I find that the Respondent has not rebutted the General Counsel's prima facie case. Having failed to do so, I find that Mercado's decision to cancel Vargas'

December 13, 2004, vacation was, as alleged in the complaint and contended by the General Counsel, unlawfully motivated by anti-Union considerations, and a violation of Section 8(a)(3) and (1) of the Act.

(b) Diaz' December 13, 2004 transfer

Felicita Diaz has been employed by the Respondent as a family health worker for almost 31 years, most of which were spent at the main Playa de Ponce facility. Her duties consist of examining patients, assisting doctors in preparing pertinent reports, and organizing the work area. She generally worked days from 8:00 a.m. to 4:30 p.m. She testified that on December 10, 2004, she received a message from her immediate supervisor, Cruz, that Martinez wanted to see her. Diaz went to see Martinez at her office a short while later. During that conversation, Martinez told Diaz that some changes were going to take place and that she, Diaz, was being transferred to the Singapur facility. Diaz expressed surprise and asked Martinez not to transfer her, as she did not drive and had no means of getting to Singapur which was far away. Diaz contends that Martinez simply reminded her that she, Martinez, was a supervisor. Diaz then asked who else was being transferred, hoping that her seniority might be useful in avoiding the transfer. Martinez replied that her decision was already made. When Diaz asked if the transfer was the result of employee complaints about her, Martinez assured her that that was not the case. Diaz then asked Martinez whether she or Salichs had made the decision, to which Martinez replied, "Don't say that to me." When Diaz asked if it had anything to do with the Union, Martinez gave the same response. Diaz then began crying, explaining that she was her family's sole support, and that she had been working for the Respondent for many years. Martinez told Diaz that the transfer was immediate and that she would have to report to the Singapur facility on Monday, December 13, 2004. Diaz, in fact, reported to the Singapur facility on December 14. Her commute to Singapur on public transportation took approximately one and one-half hour. Her commute to work prior to the transfer was only 10-12 minutes.

Martinez testified that the decision to transfer Diaz was made by her alone sometime in December 2004. She could not recall when in December she made the decision, but contends it occurred after her unsuccessful attempt to persuade Mercado to hire additional personnel. Martinez explained that she chose to transfer Diaz because the latter was a "speedy and competent" employee. After Salichs denied her request for additional staff, Martinez notified Diaz sometime in December of her transfer. She contends that she then notified Mercado of the transfer, explaining that Diaz' transfer was needed to cover other areas. On cross-examination, Martinez drew a distinction between the "rotation" and "transfer" of an individual, the former consisting of a temporary movement of an employee from one location to another, the latter being a permanent move to another location. She contends that Diaz was rotated, not transferred, to the Singapur facility, and that Diaz was told at a meeting that she was simply being rotated. Martinez admitted, however, that Diaz had never before been rotated to another facility or location. As of the date of the hearing, Diaz was still working at the Singapur facility, more than six months after being "rotated" in December 2004, notwithstanding Martinez' suggestion in her testimony that rotations of employees are generally of short duration designed to fill in for employees who are out sick or on vacation. (Tr. 205).

As between Diaz and Martinez, I credit Diaz and find that Martinez never gave Diaz a reason for the transfer. Rather, I am convinced that, as testified to by Diaz, the decision to transfer her occurred abruptly, without prior notice, and that despite attempts by Diaz to ascertain why she was being transferred, Martinez simply told her that the decision had been made. I further find that Martinez declined to give Diaz a straight answer when the latter asked if Mercado took part in the decision, or whether her union activity had anything to do with her transfer. Martinez' version was too ambiguous to be credible. Martinez, who took responsibility

for the decision, could not remember when she made the decision. Nor did she produce any evidence to support her claim of having discussed the need for additional staff with Salichs, the alleged reason cited by her for transferring Diaz, or to show that Diaz' transfer was prompted by a shortage of personnel. Salichs, who could have bolstered Martinez' claim in this regard, did not testify, leaving Martinez' claim unsubstantiated. Further, despite initially referring to her decision to move Diaz to the Singapur facility as a "transfer," Martinez abruptly changed her tune on cross-examination by Respondent's counsel by insisting that Diaz had actually been "rotated," not "transferred," to Singapur. Martinez' assertion that Diaz was only "rotated" and not "transferred" is undermined by her own further testimony that "rotations" are of short duration and generally used to fill in for employees who might be absent or on vacation. Diaz, as noted, was still at the Singapur facility more than six months after the alleged "rotation." Given her rather ambiguous and self-contradictory testimony regarding what I am convinced was a permanent "transfer," I place no credence in Martinez' testimony regarding what was discussed and said between her and Diaz on this issue.

Discussion

The record shows that Diaz was an active Union supporter who signed a Union authorization card, solicited signed authorization cards from at least ten other employees, and attended Union meetings. While there is no direct evidence to show that the Respondent knew of her activities, the absence of such direct evidence is not dispositive, for the Board may infer knowledge based on circumstantial evidence such as the timing of the alleged discriminatory action, an employer's general knowledge of its employees union activities, its animus against the union, the pretextual nature of the reason given for the adverse action, and the small size of the work force. *La Gloria Oil & Gas Co.*, 337 NLRB 1120, 1123, (2002), also *Mays Electric Co. Inc.*, 343 NLRB No. 20 (2004).

Here, the Respondent's unexplained December 10, 2004, decision to transfer Diaz from its main facility in Ponce, where she had worked for some 30 years without any prior transfers, to the Singapur facility, a one and one-half hour longer commute for Diaz, occurred just four days after Perez questioned Diaz about the Union, and unlawfully asked Diaz to signed a Company-sponsored letter disavowing any interest in the Union. Diaz credibly described Perez as being surprised and taken aback by her strong response and opposition to the Respondent's conduct in trying to get her and other employees to sign the antiunion letters. Although Perez, as noted, sought to disassociate the Respondent from any involvement in the preparation and circulation of the antiunion letter, Diaz made clear to Perez that she did not believe the latter's assertion. Diaz' conduct in refusing to sign the letter, in questioning the propriety of the Respondent's and Perez' actions regarding the letter, and in challenging Perez' assertion regarding the Respondent's involvement in the preparation and circulation of the antiunion letter, would, I am convinced, have led Perez to suspect, if not believe, that Diaz was, at a minimum, a Union sympathizer or, at most, a Union activist.

Further, no evidence was produced, other than Martinez' unsupported claim to the contrary, to show that Diaz' transfer to the Singapur facility was precipitated by a shortage of personnel. As noted, Salichs, who might have corroborated Martinez' claim that she sought and was denied additional staff by Salichs, did not testify, warranting an adverse inference that had she done so, her testimony would not have benefited the Respondent's case. The Respondent likewise produced no documentary evidence, such as staffing records or other documents showing the Respondent was having difficulty providing services at the Singapur facility because of a staffing shortage, to demonstrate that its immediate transfer of Diaz, without explanation and on short notice, from the main facility in Ponce, where Diaz had worked for almost thirty years without any prior transfer, to the more remote Singapur facility, was

prompted by economic or business necessity. The lack of such evidence, coupled with Martinez' failure to give Diaz a reason for the transfer, and her false attempt to portray the transfer as simply a temporary "rotation" when the record clearly suggests otherwise, convinces me that the "shortage of personnel" explanation proffered by Martinez for Diaz' transfer is nothing more than a pretext, and that the real reason is one which she seeks to hide. The pretextual reason given for Diaz' transfer, made without explanation to Diaz just four days after she dared to challenge and question Perez' conduct in asking her to sign a letter disavowing the Union, and the obvious hostility and animus, as demonstrated by the various unfair labor practices it is found to have committed, leads me to believe that the Respondent knew or suspected, when it transferred Diaz, that the latter sympathized with or supported the Union. Thus, I find that the General Counsel has made a prima facie showing that Diaz' December 13, 2004, transfer to the Singapur facility was retaliatory in nature and motivated by antiunion considerations.

The Respondent has presented no credible evidence to refute the General Counsel's prima facie case. Thus, it presented no evidence, other than Martinez' rejected testimony, that Diaz was transferred for legitimate, non-discriminatory reasons. Martinez' unsubstantiated explanation for the transfer, that she made the decision after Salichs refused to grant her request for additional personnel, finds no support in the record, and as discussed above, amounts to nothing more than a pretext. Martinez' bare claim, without proof, that her decision to transfer Diaz was prompted by Salichs' response to her request, is simply not sufficient for the Respondent to meet its burden under *Wright Line*, supra. *Hospital Espanol Auxilio Mutuo De Puerto Rico, Inc.*, 342 NLRB No. 40, slip op. at 19 (2004). Accordingly, the Respondent's transfer of Diaz on December 10, 2004, to the Singapur facility was, as alleged in the complaint, unlawful and a violation of Section 8(a)(3) and (1) of the Act.

(c) The Ramirez and Sanchez warnings
and transfer of Ramirez

Ramirez had worked a fixed day shift (7:00 a.m.-3:30 p.m.) as a registered nurse for the Respondent at its main Ponce facility for some 23 years, until transferred to the Tallaboa facility on January 31. She testified that in all her 23 years with the Respondent, she had never before been transferred to another facility. As previously discussed, on January 13, an incident occurred during which Salichs told Ramirez that she would get even with Ramirez by transferring her to the El Tuque facility because Ramirez had failed to perform a lab procedure, e.g., drawing a blood sample, on Salichs. At around 9:00 a.m. the following morning, January 14, Ramirez was summoned to the office of her immediate supervisor, Wanda Vasquez. At that meeting, according to Ramirez, Vasquez notified her she was being transferred to the El Tuque facility, and that Salichs had made the decision because she wanted to move the staff around. Ramirez told Vasquez that Salichs had mentioned the transfer to her the day before, but that it came about rather abruptly.

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Ramirez testified that around noontime on January 14, Salichs called her into office and told Ramirez that she should be addressing patients as "Usted," the polite form of "You" in Spanish, instead of using "tú", the more familiar and less formal Spanish version of "You". Ramirez answered that, at times, it might be more beneficial to use the more familiar term "tú" because it tended to create a greater sense of trust in the patient for the nurse, allowing the patient to be more candid in disclosing his/her problems. Ramirez then asked Salichs why her transfer had occurred so suddenly, and Salichs replied that Martinez was responsible for the abrupt nature of transfer because the latter did not want nurses in the lab. (Tr. 223).

Ramirez claims that at a meeting with Martinez in the afternoon of January 14, Martinez

told her that she was being transferred as part of Salichs' plan to reassign personnel. Ramirez asked Martinez to be honest with her and tell her why she was being transferred, pointing out that while Martinez claimed the decision was made by Salichs as part of an overall personnel reassignment plan, Salichs told her it was Martinez who made the decision because she did not want nurses in the lab. Martinez insisted that the decision was made by Salichs, not her, and reiterated that the decision was part of Salichs' plan to move staff around. Ramirez claims that at some point following her discussion with Martinez, she discussed the matter again with her supervisor, Vasquez, who told Ramirez that she had discussed the transfer with Salichs, Martinez, and the Respondent's Medical Director, Dr. Garcia, but had no success in addressing the matter. Vasquez, according to Ramirez, told her that her hands were tied because she represented the administration while Ramirez was "a Union worker." (Tr. 226). Neither Salichs nor Vasquez testified. Accordingly, I credit Ramirez and find that Salichs told her the transfer decision was made by Martinez. I also find that when notified by Vasquez of the transfer, the latter told Ramirez that Salichs made the decision, and further find that, when she confronted Martinez about the transfer and asked her to clarify who made the decision, Martinez insisted that Salichs ordered the transfer. Finally, I credit Ramirez and find that Vasquez told her that because Ramirez was a "union worker," she could not help her.

Ramirez testified that in addition to being notified on January 14, of her transfer, she also received a written warning from Mercado that day for "attending to a Union representative" who was in the area handing out flyers.[15] (see GCX-15). The warning accused Ramirez of violating "the policies set forth by our Institution," and warned that, if such behavior continued, the Respondent would be forced to take disciplinary action. Ramirez described the incident as follows. After drawing a blood sample from a patient, she went on a fifteen minute break. During her break, she went to the waiting room to provide orientation to some patients and, while there, observed a union agent handing out flyers announcing a party (Tr. 229, 232). Ramirez took one of the flyers to show to Salichs, as she believed that the party described in the flyer was the same one Salichs had alluded to during their January 7, discussion. Nothing in Ramirez' account of that incident suggests that Ramirez engaged in any discussion or exchange with the Union representative distributing the flyers.[16] Minutes later, Mercado entered the waiting room and began screaming that she intended to issue warnings to all employees who were "paying attention" to the Union agent handing out the literature. Only one other employee, medical technician Sanchez, was present when Mercado made her statement. Ramirez received her written warning at around 1:00 p.m. that day, and testified that Sanchez also received a warning for the same reason. A copy of Sanchez' warning, containing the exact same language found in Ramirez' warning, was received into evidence as GCX-16. Ramirez explained that she was unaware of the "policies" referenced by Mercado in her warning letter, but did recall being told verbally that the sale of items in the facility, including the waiting room, was prohibited. I credit Ramirez's account of this incident as Mercado did not testify.

The only explanation provided by the Respondent for transferring Ramirez came from Martinez. Her testimony as to who made the transfer decision is inconsistent with Ramirez' recollection of events. Thus, contrary to Ramirez' assertion that Martinez and Vasquez both pointed to Salichs as the one who made the decision because she wanted to move staff around,

[15] The record does not make clear when on January 14, Ramirez received the warning.

[16] It is unclear from the warning language just what Mercado meant by her assertion that Ramirez had "attended" to a Union representative. As discussed infra, Ramirez gave no indication in her credited testimony that she had conversed or interacted with the Union representative. Ramirez, as noted, testified only to taking one of the flyers that the Union representative was distributing at the facility.

Martinez claims that she alone made the decision to transfer Ramirez, and that she did so based on three complaints she received concerning Ramirez. (Tr. 159-161).

Martinez explained that all three complaints were brought to her attention by Salichs. The first and second complaints involved incidents that occurred on or before December 8, 2004. As to the first complaint, Martinez contends that Salichs purportedly reported being told by J. Ramos that Ramirez had ridiculed or made fun of an obese patient. Martinez claims that she interviewed Ramirez, in the presence of supervisor Jacqueline Santiago, regarding the first complaint, and that Ramirez denied the incident occurred. Martinez admits that she did not investigate the incident, nor did she follow her practice of allowing an employee's immediate supervisor, in this case Vasquez, an opportunity to resolve the problem first with the employee before proceeding further, or of meeting with the patient and the staff member involved. She explained that her failure to investigate or to follow past practice came about because J. Ramos did not identify the patient who allegedly made the complaint.

The second complaint, Martinez contends, was a two-fold one, involving alleged mistreatment by Ramirez of a patient, and of the Respondent's accountant, Francisco Bayanilla. As to the incident involving Bayanilla, Martinez claims she discussed the incident with him and learned that it had occurred " a long time ago." According to Martinez, Bayanilla could not be any more precise than that, and she readily admits that she did not press Bayanilla to be more specific as to when the incident might have occurred. (Tr. 167). As to the complaint involving Ramirez' alleged mistreatment of another patient, Martinez admits that she did not conduct an investigation into what occurred because, like the first complaint against Ramirez, the patient involved was never identified to her. It is unclear whether Martinez ever discussed the latter complaint, or the Bayanilla incident, with Ramirez.[17]

The third complaint mentioned by Martinez as the cause for Ramirez' transfer involved the January 7, incident with Salichs. Salichs, Martinez contends, complained to her on January 20, that Ramirez had been disrespectful while drawing a blood sample from her on January 7, by speaking to her in an informal manner Martinez admits that she never asked Salichs to explain or clarify what specifically Ramirez had done wrong, or what may have been said by Ramirez that was improper. (Tr. 172-173). Martinez had no first-hand knowledge of what transpired between Salichs and Ramirez on January 7, as she was not present, and simply took Salichs' word as to what occurred without interviewing Ramirez.

Martinez was unable to recall when she made the decision to transfer Ramirez. However, when shown a January 20, report prepared by her entitled "Summary Record" discussing the transfer (see GCX-13), Martinez testified that the transfer decision was made that same day. The January 20, report contains Martinez' reference to a phone call received from Salichs complaining that Ramirez was disrespectful to her while drawing blood, reminding Martinez of the Bayanilla incident, and recommending that Ramirez be "transferred to one of the

[17] A "Summary Record" report, dated 12/8/04, was apparently prepared by Martinez on the Bayanilla and the "obese" patient incidents. (see GCX-12). On its face, GCX-12, in its original form, appears to consist of more than one page. For reasons unknown, only the first page of that report was offered and received into evidence. A cursory reading of the report shows that the second page, presumably containing an account of the Bayanilla incident, was left out of GCX-12. Consequently, except for some vague reference to an incident involving Bayanilla cited by Martinez at the hearing, it is not known precisely what, if anything, Bayanilla's complaint regarding Ramirez involved. Nor is there any indication that this alleged matter was ever discussed with Ramirez.

Satellite Centers as a result of the complaints from patients." The January 20, report does not indicate when Martinez received the call from Salichs which led her to prepare it. It appears from the report that Ramirez was interviewed by Martinez on January 20, regarding the allegation that she had been disrespectful to Salichs, and that, after denying the allegation, Ramirez was told she was being transferred to one of the Satellite Centers, as proposed by Salichs.

While I believe, from Ramirez' undisputed testimony, that Salichs had already decided by January 14, to transfer her to another facility, the selection of the Tallaboa facility as her new work location appears to have been made at some point between January 20, and January 25, for a "Summary Record" prepared by Martinez on January 25, shows that Martinez met with and informed Ramirez that day that she was being transferred to the Tallaboa facility because of complaints received from patients. (See GCX-14). Martinez purportedly advised her that she would be sent to the Singapur facility once a position became available. Ramirez denied any wrongdoing, insisted that the allegations purportedly lodged against her by patients were not true, and asked that the patients be summoned. The report shows Martinez asserting that the complaints were verbal in nature and not in writing. Martinez claims that following this meeting with Ramirez, Salichs asked her what action she intended to take regarding Ramirez, and that she told Salichs that Ramirez was being sent to the Tallaboa facility. As noted, Ramirez was, in fact, transferred to Tallaboa on January 31.

Discussion

The warnings

The warnings issued to Ramirez and to employee Sanchez by Mercado on January 14, were clearly unlawful. Initially, it is not clear precisely what Ramirez and Sanchez were allegedly guilty of, for the warnings rather vaguely accused both of violating Respondent's "policies" by attending" to the Union representative. The warnings do not identify the "policies" that were purportedly violated, or how Ramirez and Sanchez had "attended" to the representative. As already noted, Mercado, who issued the warnings and who, consequently, was in the best position to answer these questions, did not testify. The only two policies or rules mentioned in the record are the above-described no-solicitation and no-distribution rules which, as found above, are facially invalid and unlawful. However, Ramirez' undisputed and credited testimony reflects that her conduct consisted of nothing more than accepting a flyer from the Union representative. Nothing in her testimony suggests that she engaged the representative in conversation, or that she took part in soliciting other employees or in distributing literature.[18] The Respondent produced no evidence to show that it had a policy prohibiting employees from accepting non-work related material from others at the workplace. In fact, Ramirez testified that she had in the past been handed non-work related literature, such as invitations, or advertisements for grass cutting or catering services, at the facility, and that, after accepting the literature and possibly chatting briefly with the individual distributing the item, she simply put the literature away and left, and was never warned or disciplined for doing so. (Tr. 235, 243).

Nor would the Respondent have had any reason for issuing Ramirez a warning for violating its no-solicitation and no-distribution policies, for as evident from her credited and uncontradicted testimony, she engaged in no such conduct. More importantly, the Respondent

[18] It is not known what, if any, conduct Sanchez engaged in as she, like Mercado, did not testify, and as Ramirez was not asked what she may have observed Sanchez doing in their encounter with the Union representative.

could not lawfully have relied on the above solicitation and distribution rules to justify the warning, for, as previously discussed and found, both rules are facially invalid and unlawful, and any disciplinary action taken pursuant to an unlawful no-solicitation or no-distribution rule is deemed unlawful. *Double Eagle Hotel & Casino*, 341 NLRB No. 117, at fn. 3 (2004); *Opryland Hotel*, supra. In short, the record makes patently clear that Ramirez was engaged in protected activity when, during her break time, she accepted the handout from the Union representative.

The Respondent's disparate treatment of Ramirez, e.g., issuing her a warning for accepting the Union representative's handout when employees in the past had accepted nonunion, non-work related literature from others in the facility without repercussion, also makes clear that it was Ramirez' contact with the Union representative, and her willingness to accept the literature handed to her by the Union representative, which Mercado found objectionable, and which led her to issue the warnings. The Respondent has offered no legitimate explanation for the warning. Accordingly, I find that the warning issued to Ramirez was discriminatorily motivated by anti-Union animus, and violated Section 8(a)(3) and (1) of the Act. I further find, as alleged in the complaint, that the warning issued to Sanchez, which is identical to that issued to Ramirez, was motivated by the same anti-Union considerations, and also violated Section 8(a)(3) and (1) of the Act.

Ramirez' transfer

As to Ramirez' January 31, transfer to the Tallaboa facility, I find that the General Counsel has made a prima facie showing that the decision was unlawfully motivated by antiunion considerations. Ramirez, as noted, admitted that she had not engaged in any union activity at any time in 2004.[19] There is, however, evidence to indicate that the Respondent believed otherwise. Salichs' January 7, remarks to Ramirez about having heard that Ramirez was a Union delegate, and that she did not want Ramirez to betray her, strongly suggests that Salichs suspected Ramirez of having some involvement with the Union, possibly as one of its representatives. Those suspicions, I am convinced, were enhanced when, one week later, on January 14, Ramirez was seen accepting a leaflet from, and possibly speaking with, a Union representative for which she was issued a warning. Finally, supervisor Vasquez' remark to Ramirez on January 14, that she was unable to help Ramirez with the transfer because Ramirez was a Union worker, makes patently clear that the Respondent believed, rightly or wrongly, that Ramirez was a Union supporter, and that it was that belief which prompted the Respondent to transfer her.

In these circumstances, the fact that no evidence was produced to show that Ramirez was involved with the Union prior to January 14, is not fatal to the General Counsel's prima face case, or precludes a finding that the transfer was unlawful, for the Board has held that an employer's adverse action against uncommitted, neutral, or inactive employees in order to discourage employee support for a union violates Section 8(a)(3) of the Act. *Wal-Mart Stores, Inc.*, 340 NLRB 220, 221 (2003). Here, the Respondent's suspicion or belief that Ramirez was somehow involved with the Union, its animus and hostility to the Union as demonstrated by the Section 8(a)(1) and other unfair labor practices it is found to have engaged in, and, as more fully discussed below, the pretextual reason proffered by the Respondent for initiating the transfer, warrants a finding that the transfer was indeed motivated by antiunion considerations and intended to discourage employee support for the Union. Accordingly, I find that the General Counsel has made a prima facie showing that the transfer was unlawful.

[19] She was not, however, asked if her non-involvement in union activity extended into 2005.

The Respondent, in turn, has presented no credible evidence to rebut the General Counsel's prima facie case. Thus, I am not convinced, as testified to by Martinez at the hearing, that Ramirez was transferred to the Tallaboa facility on January 31, because of complaints allegedly lodged against her by patients, and by Salichs and Bayanilla. Rather, the evidence, or lack thereof, makes clear that this particular explanation is nothing more than a pretext. Several factors lead me to so conclude. For example, while Martinez claimed to have transferred Ramirez because of complaints filed against her by patients, and by Salichs and Bayanilla, the January 25, "Summary Record" prepared in conjunction with the transfer states that the decision was prompted only by patient complaints, and gives no indication that the Salichs and Bayanilla complaints were taken into account. Martinez had an opportunity at the hearing to explain away this apparent discrepancy between her testimony, and the statement in January 25, Summary Record, but failed to do so. Her failure to explain this discrepancy convinces me that the complaints by Salichs and Bayanilla played no role in the decision to transfer Ramirez, and that Martinez, who offered no evidence with respect to the patient complaints she purportedly also relied on, simply cited the Salichs and Bayanilla complaints at the hearing in an attempt to lend some legitimacy to Ramirez' suspect transfer. "Shifting reasons for discipline, in the presence of a prima facie case, are evidence of, and support, a finding of an unlawful motive." *Scott Lee Guttering Co.*, 295 NLRB 497, 507 (1989); also, *Aljoma Lumber, Inc.*, 345 NLRB No. 15 (2005).

Further, Martinez, as noted, did not personally witness any of the incidents underlying the patient complaints which she claims she relied on to transfer Ramirez. Rather, Martinez purportedly learned of the patient complaints from Salichs. However, Martinez, by her own admission, never bothered to investigate these alleged complaints from patients and presumably took the action she did against Ramirez based solely on Salichs' word. Thus, Ramirez was never told which patients had complained about her, what the nature of those complaints were, or when they were alleged to have occurred. As a result, Ramirez never got the opportunity, prior to being transferred, to adequately or properly dispute or challenge the complaints purportedly lodged against her by patients. Martinez' failure to investigate the alleged patient complaints lodged against Ramirez, and her failure thereby to allow Ramirez an opportunity to defend herself against said complaints, further support a finding of pretext. *Aljoma Lumber, Inc.*,supra; *Primo Electric*, 345 NLRB No. 99 (2005); *Washington Fruit And Produce Company*, 343 NLRB No. 125 (2004); *Washington Nursing Home, Inc.*, 321 NLRB 355, 374(1996).

Finally, there is reason to doubt Martinez' assertion that she alone made the decision to transfer Ramirez. Ramirez, as noted, testified, without contradiction, that her supervisor, Vasquez, told her that it was Salichs who had Ramirez transferred because Salichs wanted to move staff around. Moreover, Ramirez further claims that Martinez also mentioned to her on January 14, that Salichs was transferring her because she, Salichs, wanted to move personnel around. I am inclined to believe that Salichs, and not Martinez, made the decision to transfer Ramirez, and that Martinez simply carried out her instructions. Several factors, including Salichs' January 13, threat to transfer Ramirez, Vasquez' statement to Ramirez that Salichs had decided to transfer Ramirez as part of a plan to move personnel around, and the January 20, Summary Record showing that Salichs "recommended" that Ramirez be transferred to one of the other facilities, clearly support such a finding. As Salichs was the Respondent's highest management official as well as Martinez' superior, it is highly unlikely that Martinez would have ignored or not followed through with Salichs' recommendation to transfer Ramirez. Rather, I find it more likely than not that the actual decision to transfer Ramirez was made by Salichs, and that Martinez simply performed the ministerial act of effectuating the transfer. Any doubts in this regard could easily have been resolved by Salichs. However, as already noted, Salichs was not called to testify, leading me to conclude that, had she done so, Salichs would not have corroborated Martinez. Therefore, Martinez' claim of responsibility for transferring Ramirez, like

her claim of having relied on the Salichs and Bayanilla complaints to justify the transfer, is rejected as not credible. Having failed to provide a credible, nondiscriminatory reason for transferring Ramirez, the Respondent, I find, has not rebutted the General Counsel's prima facie case. Accordingly, I further find that Respondent, believing that Ramirez was somehow involved with the Union, transferred her to the Tallaboa facility on January 31, in retaliation for her alleged activities and to discourage others from supporting the Union. Ramirez' transfer was, therefore, unlawful and violated Section 8(a)(3) and (1) of the Act.

3. The alleged Section 8(a)(5) conduct

A. The unilateral changes in working conditions

The complaint further alleges, and the General Counsel contends, that the Respondent's decision to transfer Ramirez on January 31, to the Tallaboa facility also violated Section 8(a)(5) and (1) of the Act, as it was made unilaterally and without affording the Union prior notice and an opportunity to bargain over the decision. I agree.

An employer's obligation to bargain arises on the date that a majority of the appropriate unit employees select the union as their representative. *Southside Hospital*, 344 NLRB No. 79 (2005); *Gulf States Mfg., Inc.*, 261 NLRB 852, 863 (1982). Here, the Union achieved majority status on January 11, as a result of the election conducted that day. Consequently, as of January 11, the Respondent became statutorily obligated to bargain with the Union over the employees' terms and conditions of employment, and was not free to unilaterally change them without first notifying the Union and giving it a chance to bargain over any proposed changes.

The transfer of Ramirez, a unit employee, from Respondent's main facility to the Tallaboa facility located in a different town, amounted to a change in her terms and conditions of employment. Further, according to the undisputed and credited testimony of Union organizer Maria Revelles, it occurred without prior notice to the Union. The transfer clearly had a material and substantial impact on Ramirez' working conditions as it resulted in Ramirez being moved from the Respondent's main facility in Ponce, where she had worked for more than 20 years, to a more distant facility in another town presumably requiring a longer commute. In these circumstances, the decision to transfer Ramirez was a mandatory subject of bargaining that required the Respondent to notify and allow the Union an opportunity to bargain before implementing the transfer. *Venture Packaging, Inc.*, 294 NLRB 544, 556 (1989). The Respondent has offered no explanation or justification for its failure to do so. Nor has it been shown, or argued by the Respondent, that Ramirez' transfer was consistent with an established past practice which might have justified the unilateral action. Accordingly, I find that the Respondent's unilateral decision to transfer Ramirez to Tallaboa constituted a breach of its bargaining obligation, and violated Section 8(a)(5) and (1) of the Act.

The General Counsel also contends, and I agree, that on March 11, the Respondent further violated Section 8(a)(5) and (1) by changing Vargas' work schedule and location without notifying or bargaining with the Union. The record in this regard reflects that on March 11, Mercado gave Vargas a letter explaining that, effective March 14, his new work hours would be from 1-5 p.m., and from 6-9:30 p.m. It further explained that from 1-5 p.m., he would be working at the X-Ray department, and that from 6-9:30 p.m., he would cover the Emergency Room. (GCX-11). Vargas testified that for about eight years prior to the March 11, schedule change, he worked in the "emergency area" in the main facility from 2:30 p.m.-11 p.m. As a result of the change, Vargas was now required to report for work 1½ hours earlier, and to spend half of his shift at another location in a different building. I find the change in Vargas' work schedule and location had a material and substantial effect the terms and conditions of his employment, and

constituted a mandatory subject that required prior notice and bargaining with the Union before being implemented. *Indian River Memorial Hospital, Inc.*, 340 NLRB No. 58 (2003), *Pepsi-Cola Bottling Company Of Fayetteville, Inc.*, 330 NLRB 900, 902 (2000). Revelles, as noted, testified, credibly and without contradiction, that no such notice or bargaining opportunity was provided to the Union regarding this matter. Accordingly, by changing Vargas' work schedule and location without first notifying and bargaining with the Union, the Respondent breached its bargaining obligation and violated Section 8(a)(5) and (1) of the Act.[20]

It is further alleged in the complaint, and argued by the General Counsel, that the Respondent also violated Section 8(a)(5) and (1) when, on January 19, Mercado sent a memo to employees notifying them that they were no longer allowed to leave the facility during working hours, to arrive tardy to work, or to leave prior to the end of their shift because said practices were affecting patient service. (See, GCX-5). The memo did not explain how patient services were being affected, and Mercado was not called as a witness to further explain her reasons for discontinuing these practices.

As to the practices themselves, A. Martinez testified, without contradiction, that prior to the January 19, memo, employees were allowed to report to work five minutes after their regularly scheduled start time and not be deemed tardy, and to leave work early in emergency situations simply by notifying their supervisor. She was not questioned about, and consequently did not explain, what the practice had been regarding employees being able to leave the facility during working hours. It is reasonable to assume, however, from the directive in the memo prohibiting employees from leaving the facility during working hours, that employees had, prior to the memo, been allowed to leave the premises during working hours, including presumably during their break and lunch periods. The restrictions in the memo make no exception for employees wishing to take their break and lunch periods outside the facility to do so, nor is there any exception made for employees who might arrive a few minutes late or who need to leave before the end of their shift because of an emergency. Further, while Mercado's letter does not explain what, if anything, might occur if employees failed to comply with the new restrictions, it is safe to assume that the Respondent, having notified employees that the above practices would no longer be allowed, intended to enforce these new restrictions through disciplinary measures if necessary.

The restrictions imposed by Mercado's January 19, memo on the employees' ability to leave the facility during working hours, including during their break and lunch periods, and on their ability to arrive a few minutes late or to leave early even in emergency situations, was a clear departure from established past practices and, in my view, materially and substantially affected their terms and conditions of employment, rendering the changes mandatory subjects of bargaining. *Vanguard Fire & Security Systems*, 345 NLRB No. 77 (2005); *Pepsi-Cola Bottling*

[20] There is insufficient evidence in the record to support the General Counsel's further assertion that the Respondent also violated Section 8(a)(5) and (1) by changing the work schedule of X-ray technician, Alben Falche, from 8 a.m.-4:30 p.m., to 7 a.m.-3:30 p.m. The evidence regarding this individual is scant, at best, and involves Vargas' assertion that he noticed that Falche's work schedule had been changed when he happened to glance at the work schedule that had arrived at the department. That Vargas may have seen certain entries in the department work schedule does not necessarily mean that Falche's work schedule had actually been changed. It might have been a misprint, or a change requested by Falche himself for that particular day, etc. Falche was not called to testify about this alleged change. In sum, a case for finding that an unlawful unilateral change was made to Falche's work schedule has simply not been made.

Company Of Fayetteville, Inc., supra; *Blue Circle Cement Company, Inc.*, 319 NLRB 954, 958 (1995); *Advertiser's Mfg. Co.*, 280 NLRB 1185, 1192 (1986). The evidence, in particular, Revelles uncontradicted and credited testimony, makes patently clear that the Respondent never notified, or offered to bargain with, the Union before deciding to terminate these past practices, and to impose new and obviously more stringent requirements on employees' work hours. The Respondent's failure to do so constituted, I find, an abrogation of its bargaining obligation and violated Section 8(a)(5) and (1) of the Act, as alleged.

B. The Union's request for information and refusal to bargain

On January 31, soon after the Union was certified by the Board, Revelles wrote to Salichs asking that the Respondent provide the Union with certain specified information needed to "effectively negotiate on behalf of our members."[21] The letter asked that the requested information be provided by no later than February 15, and provided phone numbers the Respondent could call if it had any doubts or questions about the information request.

On February 7, Revelles sent Salichs another letter requesting that bargaining commence on February 23, and asking her to confirm by February 15, if the February 23, start date was appropriate. That same day, according to Revelles, she received a letter from Respondent's attorney Diaz acknowledging receipt of her January 31, information request, and stating that the Respondent was looking for the documents requested. The letter from Respondent's attorney, received into evidence as GCX-19, in fact states that Respondent's management had been asked to make the requested information available "in order to discuss it afterwards."

[21] A copy of the Union's January 31, information request was received into evidence as GCX-17. A modified version of that January 31, request, excluding certain items which the General Counsel conceded at the hearing were not relevant to the Union, was received into evidence as an attachment to GCX-19(k), the complaint in the case. The information sought, as per the revised request attached to the complaint, is grouped into three numbered items. **Item No. 1** asks for the "number of employees in the appropriate units divided by departments, classification, and status. **Item No. 2** asks that the following information, by department, be provided for each employee in the bargaining units: (a) Name; (b) Telephone number and address; (c) Salary per hour; (d) Hiring date; (e) employment status; (f) Position title, description, functions and duties, work hours; (g) Date and amount of the last salary increase; (h) Any other type of salary scale that is currently in effect; (i) Position description for every classification; (j) Full and detailed description of the following benefits and costs for the employee as well as for the employer, and specifically employees subscribed to the same for: medical plan, dental plan, optical plan, retirement plan. **Item 3** asks for "any personnel regulation and/or employee manual or any other document that covers the following areas:" (a) Vacations-holidays and the usage of the same; (b) the usage of sick leave, educational leave, funeral leave, and personal leave, with or without pay; (c) Shifts differential; (d) Benefits due to seniority; (e) Salary increases and of processes in order to determine the salaries and/or increases; (f) Salary scale that includes all the employees of the center; (g) Employees' evaluations; (h) Differentials or per diem; (i) Payment per shift, overtime payment; (j) Payment for attending mandatory meetings; (k) Publications of positions, adjudications and litigation of the same; (l) Layoff policy; (m) Policy and hiring procedure for each unit; (n) Breaks, rests, and lunch time; (o) Process to resolve grievances; (p) Life or disability insurance; (q) Payment for continuing education.

On February 16, after receiving no response to her February 7, bargaining request, or documents pursuant to her January 31, information request, Revelles again wrote to Salichs reiterating the Union's need for the requested information. Revelles further expressed her view in the letter that the Respondent's failure to respond to her recent letters requesting bargaining dates and information suggested that it may not be acting in good faith, and again requested that the information be provided. By letter dated February 16, attorney Diaz acknowledged receipt of Revelles own letter of that day, and advised Revelles that "the information requested is being processed within the current limitations of the institution, and a meeting seems appropriate to us once the information requested is received." (GCX-21). Revelles admits receiving attorney Diaz' February 16, letter, but testified that the letter felt short in meeting her earlier demands in that it gave no date for the commencement of negotiations and provided none of the information requested by the Union.

About a month later, on March 14, Revelles, not having heard from the Respondent, wrote another letter reminding the Respondent that, while the Union had provided it with a date for the start of negotiations, no response had been received from the Respondent regarding the suggested date, nor had Respondent provided the Union with any of the requested information. Revelles then asked that the Respondent provide it with the information sought by March 18, and further proposed that negotiations begin on March 28. (GCX-22). Revelles received no response to her March 14, letter.

Having received no response to her March 14, letter, Revelles, on March 28, again wrote to Salichs pointing out that the Respondent had, to date, failed to provide the Union with any document or information requested in its previous letters. Revelles renewed her demand for the information, and proposed that the parties meet on April 15, to begin negotiations. According to Revelles, it was not until sometime on or around June 3, that the Union received some, but not all, of the information requested.

On June 13, attorney Rosalba Fourquet, who served as Diaz' co-counsel at the hearing, sent Revelles a letter questioning the inclusion in the bargaining unit of three individuals, and responding to the information request. In the letter, Fourquet states that the Respondent does not have a salary scale, and agreed to provide the Union, at a meeting scheduled for June 15, with a full description of the Respondent's medical plans, the life insurance provided by said plans, shift differentials, and pay for overtime and shifts. He further explained that the Respondent's disability insurance plans were covered by the State Insurance Fund, Drivers' Insurance and Workmen's Compensation. (GCX-24). By letter dated the same day to Fourquet, Revelles challenged Fourquet's assertion regarding the status of the three employees mentioned in her letter, and complained that no information had been provided regarding other individuals (medical technologists, laboratory employees, operating room technicians, medical assistants) who had been certified as being part of the bargaining units. Revelles further asked Fourquet that the Respondent bring proposals to the June 15, meeting. (GCX-25).

On June 15, a meeting was in fact held at the Board's regional office to discuss settlement of the underlying unfair labor practice charges. Revelles admits that the Respondent at this meeting provided the Union with more of the requested information. She testified that the Union brought proposals and its bargaining committee to the meeting, in the hope that the parties could begin negotiations. She admits knowing, however, that the meeting was called for the purpose of discussing settlement of the unfair labor practices. Attorney Diaz, she contends, made clear at the meeting that he lacked authority to engage in bargaining or to enter into a settlement agreement without first consulting with the Respondent. Revelle's above testimony regarding the Union's repeated request for information and bargaining was not contested by the Respondent at the hearing. Nor has the Respondent offered any explanation or defense to its

failure to comply with the Union's information request, and the request to provide the Union with bargaining dates.

Discussion

The complaint alleges, and I agree, that the Respondent's refusal and/or delay in complying with the Union's request for information was unlawful. It is well settled that once a bargaining obligation is created, as occurred here, an employer becomes statutorily obligated to provide the bargaining representative with information that is both relevant and necessary for the proper performance of its duties. *NLRB v. Acme Industrial Co.*, 385 U.S. 432, 435-436 (1967); *Crittenton Hospital*, 342 NLRB No. 67 (2004), *Detroit Newspaper Agency*, 317 NLRB 1071 (1995). The standard for determining what information is "relevant and necessary" is broadly construed to encompass information that will probably be relevant and of use to the union in carrying out its statutory duties and responsibilities. *Acme Industrial*, supra at 437-438. Where the information sought relates to the terms and conditions of employment of employees represented by the union, such information is deemed to be presumptively relevant and necessary, and must be produced, unless the employer can establish a lack of relevance.

The information sought here by the Union relates directly to the unit employees' wages, work hours, and other terms and conditions of employment, and is, therefore, presumptively relevant to the Union for the purpose of formulating proposals and developing a bargaining strategy. As such, the Respondent was obligated to provide the Union with the requested information in a reasonably timely manner. Except for the few items that were provided almost six months after the information request was first made, the Respondent, as of the date of the hearing, had not yet fully complied with the information request, nor so much as offered an explanation or a defense for its failure and refusal to do so. As to the information it did provide, the Respondent has offered no explanation for waiting almost six months before providing it. As noted, an employer has a legal obligation to provide relevant information in a reasonably prompt manner. *United States Postal Service*, 345 NLRB No. 25, slip op. at 14 (2005); *Teamsters Local 122 (August A. Busch & Co.)*, 334 NLRB 1190, 1224 (2001). An unreasonable delay in furnishing information is as much of a violation of Section 8(a)(5) as a refusal to furnish information at all. *Postal Service*, 345 NLRB No. 25, slip op. at 14 (2005); *DeVlieg-Sundstrand*, 306 NLRB 867 (1992). As to the limited information the Respondent did provide, I find that the submission of that information was not done in a reasonable and timely manner. Accordingly, the Respondent's delay and/ or failure and refusal to provide the Union with the requested information constituted a breach of its bargaining obligation, and violated Section 8(a)(5) and (1) of the Act.

I further find that the Respondent also violated Section 8(a)(5) and (1) by failing to comply with its statutory obligation to meet and bargain with the Union as the exclusive collective-bargaining representative of its employees. Following the Union's attainment of majority status on January 11, the Respondent became statutorily obligated under Section 8(d) to meet and confer in good faith with the Union regarding the unit employees' wages, hours, and other terms and conditions of employment. *Viking Connectors Co.*, 297 NLRB 95, 102 (1989). This "meet and confer" obligation requires that it be done at reasonable times and without any unreasonable delay. *Calex Corporation*, 322 NLRB 977, 987 (1997). In assessing whether an employer has engaged in good-faith bargaining, the Board examines the parties' overall conduct during negotiations. In this regard, the Board has found conduct, such as delaying tactics, unreasonable bargaining demands, unilateral changes in mandatory subjects of bargaining, efforts to bypass a union, and a failure to designate an agent with sufficient bargaining authority, to be indicative of a lack of good faith. *Nursing Center at Vineland*, 318 NLRB 901, 905 (1995).

Here, the Respondent's conduct following the Union's certification demonstrates not only a lack of good faith, but a dismissive attitude as well, towards the Union and the bargaining process in general. As evident by the above findings, following the Union's certification by the Board, the Respondent, rather than acknowledging the Union's majority status and its obligation to meet and bargain with the Union, attempted instead to undermine the Union and to ignore its bargaining obligation by trying to get employees to sign letters rejecting the Union, making unilateral changes in the employees' terms and conditions of employment, refusing to comply with the Union's repeated requests for information, and refusing to respond to the Union's repeated requests to begin bargaining on specific dates proffered by the Union, or to offer alternative dates of its own. Indeed, at the only meeting held by the parties at the Board's Regional Office to discuss settlement, Respondent's counsel conveyed to the Union that he lacked authority to engage in bargaining without the Respondent's consent. Although the meeting was intended to discuss settlement of the charges in this case, and not to bargain, the message conveyed to the Union by Respondent's counsel was that, even if it had been a bargaining session, he lacked the authority to negotiate on Respondent's behalf. Thus, when viewed in its totality, the Respondent's conduct clearly demonstrated a lack of good faith and interest in the bargaining process. The Respondent's response, or lack thereof, to the Union's request for bargaining, when viewed in light of its overall conduct, was not one of inadvertence or benign neglect, but rather one of deliberate and intentional avoidance designed to frustrate the bargaining process from the outset. Accordingly, I find that by failing and refusing to meet and bargain with the Union since it was first asked to do so on February 7, the Respondent has violated Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. The Respondent, Consejo de Salud de la Playa de Ponce d/b/a Centro de Diagnostico y Tratamiento de la Playa-Ponce, Ponce, Puerto Rico, is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

2. The Union, United Steelworkers of America, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act and has, since January 21, been the duly certified exclusive collective-bargaining representative of the Respondent's employees in the following two bargaining units:

Unit A

> All registered nurses employed by the Employer at its location in Ponce, P.R.; excluding all other employees, confidential employees, guards, and supervisors as defined by the Act.

Unit B

> All social workers, licensed practical nurses, medical technicians, X-ray technicians, laboratory technicians, pharmacist assistants, family healthcare workers, and mammography/sonogram technicians employed by the Respondent at its Ponce, P.R. facility; but excluding all other employees, doctors, confidential employees, guards, and supervisors as defined by the Act.

3. The Respondent has violated Section 8(a)(1) of the Act by:

(a) Implementing and maintaining rules that require employees to obtain permission before engaging in lawful solicitation and distribution activity, and that require employees to report on other employees engaged in solicitation.

(b) Preparing, distributing, and asking employees to sign letters rejecting or disavowing any interest in the Union or the payment Union fees and dues.

(c) Interrogating employees about their involvement with the Union; threatening employees with unspecified reprisals for talking about the Union; threatening employees who voted for the Union with job loss, threatening employees with a loss of, or reduction, in benefits if they supported the Union; seeking to coerce employees into refraining from supporting the Union by threatening to physically harm the Union's principal adherent, and accusing the Union and its supporters of having it investigated by federal agents.

4.The Respondent has violated Section 8(a)(3) and (1) of the Act by issuing written warnings to employees Vargas, Ramirez, and Sanchez, by canceling Vargas' scheduled vacation and changing his work schedule and location, and by transferring Ramirez and employee Diaz because of their involvement with the Union, or to discourage employee support for the Union.

5. The Respondent has violated Section 8(a)(5) and (1) of the Act by:

(a) Unilaterally, and without giving the Union prior notice and an opportunity bargain, discontinuing its practice of allowing employees to leave the facility during working hours, discontinuing its practice of allowing employees a five minute grace period to report for work and its practice of allowing employees to leave work before the end of their shift in emergency situations, transferring employee Ramirez to its Tallaboa facility, and changing Vargas' work schedule and location.

(b) Failing and refusing to provide, and providing in an untimely manner, information requested by the Union which is necessary and relevant to perform its duties as the unit employees' exclusive bargaining representative.

(c) Failing and refusing, since February 7, to meet and bargain in good faith with the Union.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent shall be required to rescind the rules found unlawful herein which require employees to obtain permission before engaging in lawful solicitation and distribution activity, and requires employees to report on the solicitation activities of other employees.

To remedy its discriminatory transfer of Diaz and Ramirez to other facilities, the Respondent shall be required to, within 14 days from the date of the Order, offer employees Diaz and Ramirez reinstatement to the positions held before they were unlawfully transferred to other facilities, or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed. The Respondent shall also make Diaz and Ramirez whole for any losses they may have sustained as a result of

their unlawful transfer to other facilities as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as set forth in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). As to the unlawful cancellation of Vargas' December 2004, vacation, the record reflects that Vargas, in fact, took his vacation sometime in February 2005. Nevertheless, to the extent Vargas sustained losses of any kind resulting from the cancellation of his vacation, or from the unlawful change in his work schedule and location, the Respondent shall be ordered to make him whole for such losses, with interest, as set forth in *F. W. Woolworth Co*., supra, and *New Horizons for the Retarded*, supra.

Regarding the unlawful warnings issued to Vargas, Ramirez, and Sanchez, the Respondent shall be required to, within 14 days from the date of the Order, rescind and remove from its files the unlawful warnings issued to them, and, within 3 days, to notify them in writing that it has done so.

The Respondent shall also be required, on request by the Union, to rescind the unilateral changes made by Mercado in her January 19, 2005, memo to employees,[22] to provide the Union with the information requested to the extent it has not already done so,[23] and to bargain, on request and in good faith with the Union.

Finally, the Respondent shall be required to post a notice to employees in English and Spanish.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[24]

ORDER

The Respondent, Consejo de Salud de la Playa de Ponce d/b/a Centro de Diagnostico y Tratamiento de la Playa-Ponce, Ponce, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Implementing and maintaining rules that require employees to obtain permission before engaging in lawful solicitation and distribution activity, or requires them to report on the solicitation activity of other employees.

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[22] The change in Vargas' work schedule and location, as noted, was found to have been discriminatorily motivated and unlawful under Section 8(a)(3), as well as an unlawful unilateral change in his working conditions in violation of Section 8(a)(5). The reinstatement and make-whole remedy for the Section 8(a)(3) violation makes a rescission remedy unnecessary in Vargas' case. As noted, however, the Respondent will be required to bargain in good faith with the Union over any other changes it may wish to make in the employees' terms and conditions of employment, including any future changes it may wish to make in Vargas' work schedule and location.

[23] The information to be provided is that set forth in paragraph 15(a) of the complaint and described in fn. 21 of this decision.

[24] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Interfering, restraining, or coercing employees in the exercise of their Section 7 rights by preparing and circulating letters for employees to sign rejecting or disavowing any interest in the Union or in the payment of Union fees and dues; prohibiting employees from talking about the Union to others while allowing discussion of other non-union matters; coercively interrogating employees about their Union activities; threatening employees with unspecified reprisals for talking about the Union; threatening employees with a loss of jobs, benefits, or reduction in benefits if they voted or otherwise supported the Union; threatening a Union representative with physical harm, or blaming the Union and its supporters because it was being investigated by federal agents.

(c) Issuing warnings to employees Vargas, Ramirez, and Sanchez, canceling Vargas' vacation,and transferring employees Ramirez and Diaz, or any other employee, to other facilities, because of their support for the Union, or to discourage other employees from supporting the Union.

(d) Unilaterally changing Ramirez' and Vargas' terms and conditions of employment by transferring Ramirez to another facility and changing Vargas' work schedule and job location, and unilaterally changing the terms and conditions of employment of bargaining unit employees by discontinuing its practices of allowing them to leave the facility during working hours, of allowing employees a five-minute grace period when reporting for work, and allowing them to leave early before the end of their shift in emergency situations, without first notify the Union and affording it an opportunity to bargain over said changes.

(e) Failing and refusing to bargain in good faith with the Union which is the exclusive collective bargaining representative of its employees in the following appropriate bargaining units:

Unit A

All registered nurses employed by the Employer at its location in Ponce, P.R.; excluding all other employees, confidential employees, guards, and supervisors as defined by the Act.

Unit B

All social workers, licensed practical nurses, medical technicians, X-ray technicians, laboratory technicians, pharmacist assistants, family healthcare workers, and mammography/sonogram technicians employed by the Respondent at its Ponce, P.R. facility; but excluding all other employees, doctors, confidential employees, guards, and supervisors as defined by the Act.

(f) Failing and refusing to provide, or untimely providing, the Union with information that is relevant and necessary for the performance of its duties as the unit employees exclusive bargaining representative.

(g) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind its rules requiring employees to obtain permission before engaging in lawful solicitation and distribution activity, and requiring employees to report on the solicitation activities of other employees.

(b) Within 14 days from the date of the Order, offer employees Ramirez and Diaz transfers to their former positions at its main Ponce facility, or, if those positions no longer exist, to substantially equivalent positions at that facility, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(c) Make Ramirez and Diaz whole for any losses they may have suffered resulting from the Respondent's unlawful decision to transfer them to other facilities, and make Vargas whole for any losses sustained due to the unlawful cancellation of his December vacation, and the unlawful change made in his work schedule and work location, as set forth in the Remedy section of this decision.

(d) Within 14 days from the date of the Board's Order, offer Vargas reinstatement to the job assignment he had before it was discriminatorily and unilaterally changed by the Respondent without notifying or bargaining with the Union.

(e) Within 14 days from the date of the Order, rescind and remove from its files any reference to the unlawful warnings issued to employees Vargas, Ramirez, and Sanchez, to the unlawful transfers of Ramirez and Diaz to other facilities, and to the unlawful cancellation of Vargas' vacation and the change made in his work schedule and job location, and, within 3 days thereafter, notify them in writing that it has done so.

(f) Rescind the unilateral changes made in Ramirez' and Vargas' terms and conditions of employment by transferring Ramirez to the Tallaboa facility and by changing Vargas' work schedule and job location, and the January 19, unilateral changes it made in the unit employees' terms and conditions of employment by prohibiting them from leaving the facility during working hours, eliminating the five-minute grace period previously allowed employees for reporting for work, and eliminating the practice of allowing employees to leave work early in emergency situations.

(g) Furnish the Union, to the extent it has not yet done so, with the information requested described in fn. 21 of the decision.

(h) On request, bargain collectively and in good faith with the Union over the unit employees' wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody it in a written, signed agreement.

(i) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

(j) Within 14 days after service by the Region, post at its facility in Ponce, Puerto Rico, in English and Spanish, copies of the attached Notice marked APPENDIX."[25] Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since December 3, 2004.

(k) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. December 7, 2005

George Alemán
Administrative Law Judge

[25] If this Order is enforced by judgment of a United States court of appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read, "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities

WE WILL NOT implement and maintain a solicitation or distribution rule that requires you to obtain permission before engaging in lawful solicitation and distribution activity, or that requires you to report on the solicitation activities of other employees.

WE WILL NOT interfere with, restrain, or coerce you in the exercise of your Section 7 rights by preparing and asking you to sign letters rejecting or disavowing interest in the Union or in the payment of Union fees and dues; prohibiting you from talking about the Union to others while allowing discussion of other non-union matters; coercively interrogating you about your Union activities; threatening you with unspecified reprisals for talking about the Union; threatening you with loss jobs, benefits, or a reduction in benefits if you voted for, or otherwise supported, the Union; threatening your Union representatives with physical harm, or placing the blame for an investigation we were subjected to by federal agents on the Union and its supporters.

WE WILL NOT discriminate against you by issuing warnings to you, transferring you to another facility, changing your work schedule and job location, or canceling your vacations because of your support for the Union, or to discourage you from supporting the United Steelworkers of America, AFL-CIO, or any other union.

WE WILL NOT unilaterally make changes in wages, hours, and other terms and conditions of employment without first notifying and giving the Union, United Steelworkers of America, AFL-CIO, which is your duly certified exclusive collective bargaining representative, an opportunity to bargain over any such changes.

WE WILL NOT fail and refuse to provide, or provide in an untimely manner, the information that the Union has requested pertaining to your wages, hours, and other terms and conditions of employment, and **WE WILL NOT** refuse to meet and bargain with the Union as your exclusive bargaining representative over the terms and conditions of your employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the solicitation and distribution rules in our employee manual that require you to obtain permission to engage in such activities, and to inform us of the solicitation activities of other employees.

WE WILL, within 14 days of the Board's order, rescind and remove from our files any reference to the unlawful warnings issued to employees Vargas, Ramirez, and Sanchez, to the unlawful transfers of Ramirez and Diaz, and to the unlawful cancellation of Vargas' vacation and the unlawful change in his work schedule and location, and shall notify them in writing, within 3 days thereafter, that this has been done and that the unlawful actions taken against them will not be used against them in any way.

WE WILL, within 14 days of the Board's order, offer employees Ramirez and Diaz transfers to their former positions at our main facility in Ponce, PR, and offer employee Vargas reinstatement to his former work schedule and work location, or if those positions no longer exist, to substantially equivalent positions, without prejudice to the seniority or any other rights and privileges they previously enjoyed.

WE WILL make employees Ramirez, Diaz, and Vargas whole for any losses they have may suffered due to our discriminatory actions against them, with interest.

WE WILL rescind the unilateral changes made to your terms and conditions of employment in the memo circulated to you by supervisor Mercado in her January 19, 2005.

WE WILL provide the Union with the information requested, as described in the decision.

WE WILL, on request, meet and bargain in good faith with the Union over the unit employees' wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody it in a written, signed agreement.

CONSEJO DE SALUD DE LA COMUNIDAD DE LA PLAYA DE PONCE, INC. d/b/a CENTRO DE DIAGNOSTICO Y TRATAMIENTO DE LA PLAYA-PONCE

(Employer)

Dated _____ By _____

(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

525 F. D. Roosevelt Avenue, La Torre de Plaza, Suite 1002

San Juan, Puerto Rico 00918-1002

Hours: 8:30 a.m. to 5 p.m.

787-766-5347

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 787-766-5377.